

Supreme Court, U. S.

FILED

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APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-552

THOMAS S. KLEPPE, SECRETARY OF THE
INTERIOR, ET AL.,

Petitioners

—v.—

SIERRA CLUB, ET AL.

No. 75-561

AMERICAN ELECTRIC POWER SYSTEM, ET AL.,

Petitioners

—v.—

SIERRA CLUB, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITIONS FOR WRITS OF CERTIORARI FILED

OCTOBER 9 AND 10, 1975

CERTIORARI GRANTED JANUARY 12, 1976

In the Supreme Court of the United States

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RELEVANT DISTRICT COURT DOCKET ENTRIES

DATE	CIVIL DOCKET
1973	
June 13	Complaint and Preliminary Interrogatories by Plaintiffs.
July 18	Answers by defendants to plaintiffs' preliminary interrogatories; c/m 7/18/73.
August 2	Answer of defendant #1 to interrogatories; exhibit A and B and C; c/m 8/2/73.
Sept. 4	Motion of plaintiffs for summary judgment; statement; P & A. table of contents memorandum; exhibits A through K. c/m 8-31.
Sept. 12	Answer of Intervenor Cities Service Gas Co. to complaint. app of Harold L. Talisman.
Sept. 20	Answer of Westmoreland Resources, intervening deft. to complaint. app of Theodore Voorhees. c/m 9-20.
Sept. 25	Answer to defts. to complaint. c/m 9-24.
Oct. 18	Supplemental answers of deft. #1 to pltfs' interrogatories. c/m 10-18.
Oct. 19	Motion of Westmoreland Resources, intervening deft. for partial summary judgment; statements; P & A table of contents; table of cases. c/m 10-19 affidavits (4) exhibit A & B.
Oct. 24	Copy of motion of The Crow Tribe of Indians, intervening deft. for partial summary judgment; P&A. c/m 10-24.
Oct. 31	Motion of defts. for summary judgment; exhibits 1 & 2; 1 through IX; 3, 4, & 5. P & A in support of motion and in opposition to pltfs motion for summary judgment; statement; opposition to pltfs statement of material facts c/m 10-31
Oct. 31	Motion of intervening defts for summary judgment; statements (2); P&A's; Exhibit A, B, C, D; affidavit, Exhibit A; c/s 10-31-73.

DATE	CIVIL DOCKET
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1973

- Oct. 31 Motion of Kerr-McGee Corporation for partial summary judgment; P & A's; affidavits (3); c/m 10-31-73.
- Nov. 2 Motion of Intervenor deft's for judgment on the pleadings. c/s 11/2.
- Feb. 14 Memorandum Opinion (N) Parker, J.
- Feb. 14 Judgment denying pltfs. motion for summary judgment; granting motion of the federal defts. for summary judgment and granting motions of the intervening defts. for summary judgment and for judgment on the pleadings. Defts. recover their costs. (N) Parker, J.
- Feb. 21 Motion of pltfs. for reconsideration and to amend judgment; P & A's; c/m 2/21/74.
- March 14 Order denying motion of pltfs. for reconsideration and to amend judgment entered on 2/14/74. (N) Parker, J.
- March 19 Notice of appeal by plaintiffs from judgment of 2/14/74 and from denial of reconsideration on March 14, 1974. Copies mailed to all attorneys of record. \$5.00 deposit by Terris.

COURT OF APPEALS DOCKET ENTRIES

- 4-12-74 Respondents' filed motion for injunction pending appeal and expedited hearing.
- 4-22-74 Intervenor-petitioners filed opposition to motion for injunction pending appeal and expedited hearing.
- 4-23-74 Federal petitioners filed opposition to motion for injunction pending appeal.
- 6-17-74 Per curiam order granting motion for expedited appeal, denying injunction pending appeal and urging restraint.
- 10-15-74 Per curiam order sua sponte remanded to District Court for further evidentiary hearing on special matters.
- 11-19-74 Respondents' filed motion for expedited consideration and for limited injunction pending appeal.
- 11-22-74 Intervening petitioners' filed opposition to motion for limited injunction pending appeal.
- 11-25-74 District Court (Honorable Barrington Parker) filed response to remand and supplemental findings.
- 11-26-74 Federal petitioners' opposition to motion for limited injunction pending appeal.
- 1-3-75 Per curiam order granting respondents' motion for limited injunction pending appeal; Judge Mackinnon dissents.
- 6-16-75 Opinion for court filed by Circuit Judge Wright; Dissenting opinion filed by Circuit Judge Mackinnon.
- 6-16-75 Judgment reversing and remanding to the District Court.
- 10-9-75 Respondents' motion to modify injunction by including Amax mining plan.
- 10-9-75 Petition for certiorari filed by federal petitioners in No. 75-552.
- 10-10-75 Petition for certiorari filed by intervenor-petitioners in No. 75-561.

COURT OF APPEALS DOCKET ENTRIES

- 10-24-75 Motion by Amax, Inc., for leave to file motion to intervene.
- 10-29-75 Intervenor-petitioner, Oklahoma Gas and Electric Company filed opposition to motion to modify injunction.
- 11-29-75 Federal petitioners filed opposition to motion to modify injunction and cross-motion to dissolve injunction.
- 10-30-75 Intervenor-petitioners filed motion to dissolve temporary injunction.
- 11-7-75 Per curiam order remanding respondents' motion to modify injunction to district court; cross-motions of federal and intervenor-petitioners to dissolve injunction denied.
- 11-4-75 Order of District Court (Honorable June Green) denied respondents' motion to enjoin approval of Amax mining plan, but limiting approval to 2 years.
- 11-7-75 Per curiam order granting motion of Amex, Inc., to intervene.
- 11-14-75 Federal petitioners' filed motion with Chief Justice to dissolve Eastern Powder River Injunction pending disposition for petitions for certiorari.
- 1-12-76 Petitions for certiorari in Nos. 75-552 and 75-561 granted; cases consolidated; stay of injunction pending final disposition of cases granted.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1132-

[Filed June 13, 19]

SIERRA CLUB, 1050 Mills Tower, 220 Bush Street, San Francisco, California 94104; NATIONAL WILDLIFE FEDERATION, 1412 16th Street N.W., Washington, D.C. 20036; NORTHERN PLAINS RESOURCE COUNCIL, 421 Stapleton Building, Billings, Montana 59101; LEAGUE OF WOMEN VOTERS OF MONTANA, 6630 Siesta Drive, Missoula, Montana 59801; MONTANA WILDERNESS ASSOCIATION, Route 1, Box 1401, Hamilton, Montana 59840; MONTANA LEAGUE OF CONSERVATION VOTERS, Box 80, Missoula, Montana 59801; LEAGUE OF WOMEN VOTERS OF SOUTH DAKOTA, P.O. Box 1989, Rapid City, South Dakota 57701, PLAINTIFFS

v.

ROGERS C. B. MORTON, Secretary of the United States Department of Interior; BURTON W. SILCOCK, Director of the Bureau of Land Management of the Department of Interior; MARVIN FRANKLIN, Assistant Secretary for Indian Affairs of the Department of Interior; GILBERT G. STAMM, Commissioner of the Bureau of Reclamation of the Department of Interior; VINCENT E. MCKELVEY, Director of the U.S. Geological Survey of the Department of Interior; EARL L. BUTZ, Secretary of the United States Department of Agriculture; JOHN R. MCGUIRE, Chief of the Forest Service of the Department of Agriculture; HOWARD H. CALLAWAY, Secretary of the United States Department of the Army; LT. GEN. F. J. CLARKE, Chief of the Army Corps of Engineers, DEFENDANTS

COMPLAINT FOR DECLARATORY JUDGMENT,
INJUNCTIVE RELIEF AND MANDAMUS

INTRODUCTION

1. This case involves the massive development of north-eastern Wyoming, eastern Montana, western North Dakota and western South Dakota. Based on the most extensive coal reserves in the world, strip mines, power plants, coal gasification and liquefaction plants, railroads, aqueducts, transmission lines, and new cities and towns have been begun or are expected to be built during the next few years. Federal agencies have already made many decisions concerning this development and will make many more decisions to enter into coal leases, to approve mining plans, to enter into options or contracts for water from federal reservoirs, to permit diversion of water from or placement of structures in navigable waterways, to grant permits for transmission lines to cross navigable waters, and to grant rights-of-way across federal lands. No comprehensive environmental impact statement or inter-disciplinary study has been made of the entire development or of any single federal action taken as part of it. This complaint alleges that defendants' proposed actions which will permit significant coal development to occur without preparation of a comprehensive environmental statement and interdisciplinary study violate the National Environmental Policy Act.

JURISDICTION

2. The jurisdiction of this Court is based upon the Administrative Procedure Act, 5 U.S.C. 701-706, which provides for judicial review of actions of federal agencies; upon 28 U.S.C. 1331(a), which gives the district courts jurisdiction over cases involving federal questions in which the amount in controversy exceeds \$10,000; and upon 28 U.S.C. 1361, which gives the district courts jurisdiction over actions in the nature of mandamus. The matter in controversy exceeds \$10,000, exclusive of interest, costs and attorneys' fees.

PARTIES

Plaintiffs

3. The SIERRA CLUB is a non-profit California corporation with an office in the District of Columbia. It was founded in 1892 and has 140,000 members organized into 42 chapters throughout the United States. The Sierra Club has been devoted to the protection of the Nation's natural resources from its inception. The Club maintains its Northern Great Plains Office in Dubois, Wyoming. The Northern Rockies Chapter of the Sierra Club has approximately 1,000 members in the States of Montana, Idaho, and a portion of Washington. The Rocky Mountain Chapter of the Sierra Club has approximately 3,000 members in Wyoming, North Dakota, South Dakota, Nebraska, Kansas and Colorado. Both chapters of the Club have been actively engaged in submitting comments and statements to, and obtaining information from, defendants concerning the North Central Power Study, the Northern Great Plains Resources Programs, proposed coal and water permits and leases, and other developments connected with exploitation of the coal resources of the Northern Great Plains area. In addition, various members of both chapters have participated in tours of mining areas, have organized a meeting of Wyoming's mining legislation, have spoken at numerous meetings on coal mining and reclamation, and most recently have formed the Northern Plains Regional Conservation Committee to work specifically on the coal, power and water problems of the region.

4. The NATIONAL WILDLIFE FEDERATION ("NWF") is a nonprofit corporation organized under the laws of the District of Columbia in 1939. NWF is a nationwide conservation organization dedicated to the restoration, wise use and perpetuation of the natural resources of North America. The individual members of clubs affiliated with NWF, together with NWF's individual associate members, total approximately two million persons. NWF has Affiliate Member Organizations

in Montana, North Dakota, South Dakota and Wyoming, which have approximately 17,000 members. NWF also has over 8,000 individual members in these states.

5. The NORTHERN PLAINS RESOURCE COUNCIL is a nonprofit organization with its principal office in Billings, Montana. It has 500 members, primarily ranchers, farmers and families in Montana, North Dakota, and Wyoming. The Council is principally concerned with protecting the environment and life style of the area from harm caused by strip mining and other effects of coal development. Its officers, members, and staff have participated in numerous meetings and testified before legislative bodies and have lobbied before the Montana legislature and United States Congress. It publishes a newsletter relating to coal development.

6. The LEAGUE OF WOMEN VOTERS OF MONTANA, whose headquarters are in Missoula, Montana, has approximately 425 members. It has worked to enforce sound reclamation practices relating to strip mining, testified for strong air and water quality legislation, and organized a coal forum for legislators and citizens concerned with coal development.

7. The MONTANA WILDERNESS ASSOCIATION is a Montana organization with over 750 members. It has supported efforts to abolish strip mining or as an alternative, to require effective reclamation.

8. The MONTANA LEAGUE OF CONSERVATION VOTERS is a Montana organization with over 100 members. It has actively worked to protect the environment from the harm which will be produced by strip mining including support for bills providing for the abolition of strip mining, for a moratorium, or for effective reclamation.

9. The LEAGUE OF WOMAN VOTERS OF SOUTH DAKOTA has 368 members. The League's headquarters is in Rapid City, South Dakota, adjoining the region of South Dakota's coal development. One of its principal purposes is to protect the environment of South Dakota by promoting intelligent use of water resources, improving air and water quality, and promoting sound land-use policies.

10. Plaintiff organizations sue on behalf of their members as well as themselves. Many of their citizens and members are residents and land owners in the Northern Great Plains region. Those who are ranchers and farmers are threatened by the destruction of their land by strip mining, by the diversion of needed water, by the threat of pollution to ground and stream water, and by the harm to animals, crops, and vegetation from air pollution. Those who operate or are employed in recreational industries are threatened by the loss of land needed by wild animals, by the threat to these animals from air and water pollution, by destruction of grazing land, by the harm to fish by diversion of water, and by pollution in streams and rivers and by vastly increased population. All those who are residents of the area or visitors to it are threatened by being forced to breath polluted air, by loss of recreational opportunities, and by the esthetic damage from constructing power plants, transmission lines, railroads, highways, and towns and cities.

Defendants

11. ROGERS C. B. MORTON is Secretary of the United States Department of Interior. He has the authority and responsibility under 25 U.S.C. 320 *et seq.*, to lease lands in any Indian reservation for rights-of-way; under 25 U.S.C. 396 *et seq.* to lease lands in any Indian reservation for mining purposes; under 30 U.S.C. 181 *et seq.*, to issue mineral prospecting permits and mining leases on federally owned lands; under 30 U.S.C. 351 *et seq.*, to lease mineral deposits within acquired lands; under 30 U.S.C. 541 *et seq.*, to lease deposits of lignite containing valuable source materials; under 43 U.S.C. 299, to dispose of mineral deposits reserved by the federal government beneath patented lands; under 43 U.S.C. 934 *et seq.*, 956-959, and 961, to issue rights-of-way for aqueducts, railroads, and transmission lines through federally owned lands; under 43 U.S.C. 389 and 541, to enter into contracts for water-rights and to issue water-right certificates; under 43 U.S.C. 440, to regulate the use of water for reclamation projects; and under

30 U.S.C. 189 and 359, to regulate the development of publically-owned coal lands and deposits.

12. BURTON W. SILCOCK is Director of the Bureau of Land Management of the Department of Interior. He has the authority and responsibility under 43 C.F.R. Part 23 to regulate surface exploration, mining and reclamation under permits, leases or contracts issued by the federal government; under 43 C.F.R. Subparts 2842 and 2850 to regulate the granting of rights-of-way for railroads, aqueducts and transmission lines through federally owned lands; under 43 C.F.R. Parts 2800, 3500 and Subpart 3814 to formulate, direct and supervise the execution of policies, programs and activities involving the issuance of coal prospecting permits, coal mining leases, and rights-of-way on federally owned and managed lands as well as on patented lands where the federal government has reserved the mineral rights beneath the surface; and under 43 C.F.R. Part 3720 to regulate the location and mining of valuable source materials located in lignite deposits on public lands.

13. MARVIN FRANKLIN is Assistant Secretary for Indian Affairs of the Department of Interior. He has the authority and responsibility under 25 C.F.R. Parts 171, 172, and 177 to formulate, direct and supervise and the execution of policies, programs and activities involving the issuance of coal prospecting permits, coal mining leases and rights-of-way on lands within Indian reservations.

14. GILBERT G. STAMM is Commissioner of the Bureau of Reclamation of the Department of Interior. He has authority and responsibility under 43 C.F.R. Part 230 to formulate, direct and supervise the execution of policies, programs and activities involving the issuance of water-right certificates; and under 33 C.F.R. Subparts 208.40, 208.48, 208.49, 208.52 and 208.53 to regulate the discharge or release of waters from certain reservoirs in Wyoming and Montana.

15. VINCENT E. McKELVEY is Director of the U.S. Geological Survey of the Department of Interior. He has the authority and responsibility under 30 C.F.R.

Part 211 to formulate, direct and supervise the execution of policies, programs and activities involving the orderly and efficient development of federally owned coal lands and deposits under lease, permit or license; and under 43 C.F.R. Part 3720 to regulate the mining of lignite containing valuable source materials.

16. EARL L. BUTZ is the Secretary of the United States Department of Agriculture. He has the authority and responsibility under 16 U.S.C. 471 to administer the National Forests and under 16 U.S.C. 522-525 to grant easements for rights-of-way through national forests for various purposes.

17. JOHN R. McGUIRE is Chief of the Forest Service of the Department of Agriculture. He has the authority and responsibility under 36 C.F.R. Subparts 251.1 (c) (3) and 251.50-251.65 to formulate, direct and supervise the execution of policies and programs involving the issuance of special use permits, easements, or rights-of-way through the National Forests.

18. HOWARD H. CALLAWAY is Secretary of the United States Department of the Army. He has the authority and responsibility under 33 U.S.C. 1 and 708-709 to administer the nation's navigable waters and to regulate the discharge or release of waters from certain reservoirs.

19. LT. GEN. F.J. CLARKE is Chief of the Army Corps of Engineers. He has the authority and responsibility under 33 C.F.R. Subparts 209.120 and 209.200 to formulate, direct and supervise the execution of policies and programs regulating the use of waters from the Nation's navigable waters, the placement of any structures in such waters, and the grant of permits for transmission lines to cross these waters.

FACTS

20. The Northern Great Plains region involved in this lawsuit includes northeastern Wyoming, eastern Montana, western North Dakota and western South Dakota.

This region is largely vast, open plains, flat-topped buttes, long narrow divides, ridges, and badland topography. The chief vegetation is grass with small stands of cottonwood and brush along the larger streams. The region has a semiarid climate with only fourteen inches of average annual precipitation. Its economy is chiefly agrarian, based on large farms and ranches. There is little industry and a very low population, averaging about 1.4 persons per square mile. Some sections are serviced by highways and secondary roads and the Burlington-Northern Railroad crosses the area at several points, but much of the area is isolated from main transportation systems. Most of the present population derives its livelihood from ranching on the rangelands and farming in the river valleys.

21. This area contains vast coal reserves. The coal, known as the Fort Union formation, is the largest known coal basin in the world. Its total reserves have been estimated at 1.3 trillion tons which is approximately 40 percent of the coal in the entire United States. 34 billion tons of this coal lie close enough to the surface to be extracted by strip mining, this amount constituting approximately 47 percent of the strippable coal in the United States. The thick coal seams, small amount of overburden, and low sulfur content make strip mining extremely profitable. Within the last few years, tremendous interest has developed in exploiting the region's coal in constructing the electric powerplants, aqueducts, transmission lines, gasification and liquefaction plants, railroads, and new towns and cities which will be required for such development.

22. The North Central Power Study, prepared jointly by the Department of Interior and the utility companies in the area, projected the construction of mine-mouth, coal-burning electric power plants with a capacity of 53,000 to 197,000 megawatts. Most of these plants will have individual capacities of 5,000 or 10,000 megawatts, in comparison to only 2,000 megawatts at the Four Corners power plant in New Mexico. A total capacity of 197,000 megawatts would be greater than the total electrical energy capacity of any country in the world except

the United States and the Soviet Union. The Study further proposed a vast network of ultra-high voltage transmission lines reaching as far away as Portland, Oregon, and Seattle, Washington, in the Far West and St. Louis, Missouri, and Minneapolis-St. Paul, Minnesota, in the Middle West. 4,800 square miles of right-of-way would be required for this transmission line network.

23. The Bureau of Reclamation estimates that up to 2.6 million acre feet of water will be needed for the coal development in Wyoming and Montana alone. The electric power plants will require 855,000 acre feet of water annually for every 50,000 megawatts of operating capacity. Large amounts of additional water will be needed for other elements of the coal development. In order to obtain much larger quantities of water in this semiarid region, the "Appraisal Report on Montana-Wyoming Aqueducts" of the Bureau of Reclamation of the Department of Interior has proposed the construction of an extensive system of large aqueducts, 36 to 144 inches in diameter and extending from 20 to 200 miles. For example, one major proposal is for an aqueduct to transport water from the Green River in the Colorado River Basin to the Powder River in the Missouri River Basin. New dams and reservoirs have also been proposed in order to ensure an adequate water supply during dry periods.

24. Plans and proposals exist for at least 25 coal gasification plants which, using large amounts of water, will convert coal to gas to be piped to the Middle West; for slurry pipelines, which will use large amounts of water, to pipe small pieces of coal; for railroads, which will haul out the coal in its present form; and for new towns and cities to house the more than one-half million people who are expected to come to the area within the next twenty-five years.

25. The various aspects of these proposals for exploiting the area's coal reserves are closely interrelated. All the plans and proposals depend on strip mining large quantities of coal. The coal can be converted into electricity, gas, liquid fuel, or petrochemicals by a variety of processes at mine-mouth plants, thus requiring electric transmission lines, pipelines, or other methods of trans-

porting these products to distant markets. Alternatively, some or all of the excavated coal could be transported by trains or slurry pipelines to generating plants located near the points where the electricity will be used. Most of these proposals for exploiting the area's coal will require tremendous quantities of water, thus necessitating the construction of aqueducts, dams, and reservoirs. The large increase in population needed to construct and service these projects will require housing, schools, police and fire protection, sewage treatment, shopping facilities, transportation, communications, cultural and recreational resources, and even entire new cities.

26. This development has already begun. These activities include, but are not limited to, the following:

- (a) Leases and permits for coal exploration, mining and development have been issued by the Bureau of Land Management on over 320,000 acres of land, by the Bureau of Indian Affairs on over 516,000 acres of land, by the States of Wyoming and Montana on over 490,000 acres, and on vast but unknown acreage held by the Burlington-Northern Railroad and other private owners;
- (b) Large strip mines are already operating in northeastern Wyoming and southeastern Montana and new strip mines have been announced;
- (c) Two coal-burning electric power plants, each with a 350 megawatt generating capacity, are already under construction by Montana Power and Light Co. at Colstrip Montana; two more plants, each of a 750 megawatt capacity are planned there; construction has begun on transmission lines to Billings, Montana from Colstrip; and the same company has claimed rights to more than sufficient water from the Yellowstone River for all four plants;
- (d) New power plants of 200 to 300 and 1200 megawatts respectively have been announced in 1973 for Campbell and Johnson Counties, Wyoming, and four large plants are planned for North Dakota;

- (e) In March 1973, the Cities Service Gas Co. and the Northern Natural Gas Co. announced plans for four coal gasification plants in northern Wyoming and southeastern Montana and for a 700-mile gas pipeline;
- (f) Proposals have been made to the Northern Cheyenne tribe in Montana for several coal gasification plants;
- (g) The Michigan-Wisconsin Pipeline Company has asked the State of North Dakota for enough water—375,000 acre feet—for 22 huge 250 million cubic feet per day coal gasification plants;
- (h) Coal and electric power companies have obtained options from the Bureau of Reclamation for approximately 700,000 acre feet of water from the Bighorn Lake and Boysen Reservoir and private companies have requested almost 1,500,000 more acre feet;
- (i) The State of Wyoming has announced plans to purchase from the Bureau of Reclamation 60,000 acre feet of water from the Green River in western Wyoming, to be transported at least in part by aqueduct to northeastern Wyoming; and
- (j) The Burlington-Northern Railway Co. has begun building a spur-line into the coal mining area at Sarpy Creek, Montana, and has applied to the Interstate Commerce Commission for a railroad of 126 miles from Douglas to Gillette, Wyoming, the longest new railroad line to be built anywhere in the United States in over forty years.

27. The environmental effects of this development will be enormous:

- (a) Over 30 square miles of land will be strip mined each year, for a total of 900 square miles that will be stripped over the estimated thirty-year life of the power plants planned for the area.

As a result of the semiarid climate and thin topsoil, little if any land which has been strip mined in this area has ever been successfully reclaimed. It is therefore likely that hundreds of square miles of land will be permanently destroyed. Strip mining also produces considerable danger that toxic materials will pollute the area's groundwater;

- (b) The operation of huge coal-burning electric power plants will cause massive deterioration of air quality through the region and in nearby areas up to several hundreds of miles away. At present, the air there is almost entirely free of man-produced pollution. The operation of power plants with a capacity of 53,000 megawatts (which is only one-quarter of the capacity ultimately projected by the North Central Power Study) will produce emissions of 6,890 tons of sulfur oxides per year, 4,000 tons of nitrogen oxides per year, and 1,144 tons of particulates per year, representing many times the emissions of New York City and Los Angeles combined. Serious health dangers may result from fluorides, radioactive substances and other trace elements in the coal. The houses, other buildings, industry and automobiles needed by the new residents of the area will further significantly degrade the area's air quality;
- (c) The development of the area will significantly increase water pollution both in the region and in rivers which flow into other areas. This increase will be caused by the fly ash and slag from the power plants, by the mining spoils which will leach into the water, by diversion of waters that are needed to dilute pollution levels in rivers and streams, and by the additional sewage resulting from urbanization of the area;
- (d) The large-scale use of water will seriously affect the use of water for other purposes. Even today, there is not sufficient water in the Yellowstone

River in low-water years for the farming and ranching which are now the chief sources of livelihood in the area. Major additional uses for electric power and coal gasification and liquefaction plants, for reclamation of strip mined areas, and for large numbers of additional people will result in the Yellowstone River being dry in low-water years;

- (e) The abundant wildlife in the area is threatened by the destruction of grazing land through strip mining, by the large-scale use of already scarce water, by the construction of aqueducts, transmission lines, pipelines, and railroads which will obstruct the natural movement of wildlife, and by the air, water, and noise pollution which will inevitably result. The additional water pollution and substantial depletion of water in the Yellowstone River and other waterways in the area will also seriously affect fish in them;
- (f) The majestic unspoiled vistas of rangelands, buttes and mesas will be permanently changed. This beauty will be replaced by strip mines, huge electric power plants, gasification and liquefaction plants, railroads, transmission lines and new cities and towns. These activities will occupy tens of thousands of square miles of land that are now virtually deserted.
- (g) In total, a beautiful, largely uninhabited area will become a major industrial complex. The effect will be a massive change in the environment of a whole region. This area could not be restored to its present environment for many generations.

28. Numerous possible alternatives exist relating to the exploitation and development of these coal resources. The coal could be left completely untouched in order to preserve the region's present rural character or the development could be limited in scope. If the coal is developed, this development could be accomplished in a variety of

ways designed to reduce significantly the adverse environmental effects. Coal could be mined underground to prevent the destruction of hundreds of square miles of land by strip mining. Even if some strip mining were permitted, it could still be prohibited in certain areas, such as hills, where reclamation has been shown to be particularly difficult. Coal companies could be required to prove in advance of mining that reclamation would be successful. The coal could be transported elsewhere by railroad or slurry pipeline so that air pollution would not occur within the area as a result of mine-mouth power plants. Alternatively, the coal could be converted to gas or liquid fuel which would be transported for use elsewhere or used to produce electricity in the area. If electric power plants were built in the area, they could be required to use the most effective emission controls and to place transmission lines underground. If the coal is to be consumed in the area, electrical generation, gasification and liquefaction methods which would conserve water could be required. Urban planning, zoning laws, and other legislative devices could be adopted in order to produce towns and cities which avoid ugly urban sprawl.

29. A careful and comprehensive study of the available alternatives prior to development of the area's coal reserves would provide protection for the environment before permanent harm results. Such a study could consider among other issues:

- (a) Whether only underground mining should be permitted. Once large-scale strip mining is allowed on a substantial scale, the additional cost of underground mining will prevent the latter method from being competitive;
- (b) Which land can be best reclaimed after strip mining. Coal companies will naturally choose lands to mine which provide the best financial return rather than those which can be most easily reclaimed. Once the mines are opened, they will almost certainly continue to operate;
- (c) How the coal can produce the maximum economic benefit with minimum harm to the en-

vironment. This problem will require determinations as to whether the coal should be transported out of the region by railroad or pipeline, burned for electric power at the mine-mouth generating plants, gasified, or liquified;

- (d) How much additional air pollution can be permitted and what kinds of industrial plants will maximize productivity within those limits. Planning is needed in order to obtain the maximum benefit from whatever level of pollution is permitted;
- (e) What controls should be required for air-pollution emissions so that the initial plants do not cause so much air pollution that no further development may be allowed;
- (f) How the limited water resources can be best used. If available water is used wastefully, inadequate water may be available for other agricultural, recreational, and industrial purposes and the detrimental effects on the environment will be increased;
- (g) Whether common use of utility corridors should be required for transmission lines, pipelines, aqueducts and railroads in order to minimize the use of land and interference with aesthetic values;
- (h) What land-use planning should be prescribed in order to reduce the amount of land needed for industry and cities and to minimize the aesthetic and other environmental damage from development of the area.

30. The development of the area's large coal reserves raises many serious environmental questions which have not yet been thoroughly studied and which require answers before permanent environmental harm is produced. These unanswered questions include, *inter alia*:

- (a) The determination whether any reclamation of spoils from strip mines is possible in this re-

gion, the most effective methods if any are feasible, and their costs;

- (b) The kinds of toxic materials produced by strip mining and power plant emissions, the amounts which are toxic, the amount of radioactivity produced, and the effect of toxic materials and radioactivity on human beings and the environment;
- (c) The kinds and amounts of air pollution produced, their impact on the region's ecosystems, the pollution controls that should be used, and the effectiveness of these controls;
- (d) The pollution of underground water sources and streams which will result from power plants and other industry, the kinds of water pollution controls that are needed, and the effectiveness of these controls;
- (e) The effect on groundwater resources from mining since the coal beds are presently aquifers;
- (f) The effect on regional weather patterns from increased air pollution, more population, and changes in land use;
- (g) The effect on the region's livestock and wildlife, including endangered species, from the mining, the air and water pollution, the altered rangelands and the increased human population; and
- (h) The effect of an expanded population on air and water pollution, recreational resources, agricultural development, transportation and communication systems, and governmental services.

31. Defendants have already taken extremely important actions with regard to development of the coal reserves in the Northern Great Plains region. These actions include issuing coal prospecting permits and mining leases on over 836,000 acres of land and entering into options for the sale of 685,000 acre feet of water from Bighorn Lake and Boysen Reservoir.

32. The decisions that will be made by defendants in the future will be critically important concerning the degree and kind of development in the region. The federal government owns approximately 54 million acres of land with coal reserves in the Northern Great Plains region and has mineral rights to almost 75 percent of all the region's coal. The Bureau of Land Management and the Bureau of Indian Affairs have entered into or approved coal leases for thousands of acres of land in the region and these agencies, as well as the Geological Survey, have continuing powers over reclamation methods which the lessees employ on these lands. These same agencies have authority to issue additional coal prospecting permits and mining leases and to impose reclamation requirements for lands mined under the terms of those leases. The Bureau of Reclamation has 67,000 additional acre feet of water for sale from Bighorn Lake and Boysen Reservoir and plans to sell additional water from the Green River and other rivers for use in the area. The Corps of Engineers has authority over the taking of waters from the Yellowstone and other navigable waterways, the placement of structures within such rivers to divert this water, and the extension of transmission lines across navigable waters. The Bureau of Land Management, the Bureau of Indian Affairs, and the Forest Service have authority to grant right-of-way permits for transmission lines, pipelines, aqueducts or railroads over federally owned lands. Many of these decisions and actions are expected in the immediate future.

33. The United States has treated the coal development of this region as requiring comprehensive planning. The Department of Interior, together with the utility companies, made a preliminary study of the overall development, particularly relating to electric-power generation and transmission, in Phase I of the North Central Power Study which was completed in 1972. The Bureau of Reclamation made a preliminary investigation of the overall development, particularly with relation to the availability of water, in the Appraisal Report of Montana-Wyoming Aqueducts, which was completed in 1972.

A number of federal agencies have begun work on the Northern Great Plains Resources Program, which purports to be a comprehensive study of coal development, including its effect in the environment.

34. None of the Federal studies which have been completed have provided any substantial or detailed analysis of the environmental consequences of development in the region. No interdisciplinary or comprehensive studies have been prepared concerning this problem and no alternatives to the present coal development have been studied and developed. No environmental impact statement has been prepared or considered concerning any individual federal acts relating to the coal development in the Northern Great Plains region or concerning the development in the region as a whole.

35. The State of Montana has likewise considered development of the area as a unified whole in the "First Annual Report" of the Montana Environmental Quality Council (1972) and the "Coal Situation Report" of the Montana Coal Task Force (1973). The State of Wyoming has begun a comprehensive study of coal development in the northeastern part of the State, and the State of North Dakota has begun a comprehensive study of such development in its western portion.

36. Federal officials have recognized the need for a comprehensive environmental-impact statement on the development of the Northern Great Plains region. William D. Ruckelshaus, Administrator of the Environmental Protection Agency, wrote Secretary of Agriculture Butz and Secretary of Interior Morton (March 24, 1972):

Environmental impact statements prepared on project-by-project basis in accordance with the National Environmental Policy Act are not adequate to evaluate the overall regional impact. What is needed is a comprehensive, systematic and interdisciplinary study of coal development in this region, similar to the Southwest Energy Study and the oil shale development program, which satisfies the letter and the spirit of the National Environmental Policy Act.

The Secretary of Agriculture replied (Letter to the Administrator, Environmental Protection Agency, May 2, 1972):

We agree that a comprehensive, systematic, and interdisciplinary study of all aspects of the development and use of our coal resource is needed.

This position has been agreed to by the Secretary of Interior, Secretary of Agriculture, Chief of the Forest Service and other high federal officials.

37. The actions described in paragraph 32 above will result in severe harm to air quality, water quality, land, wildlife, aesthetics, and other important aspects of the environment of the Northern Great Plains region. If further actions are taken without preparation and consideration of a comprehensive environmental impact statement, significant elements of the region's environment will be needlessly and permanently destroyed. Therefore, unless defendants are enjoined from taking further actions without preparation of a comprehensive environmental-impact statement, plaintiffs and the public will suffer immediate and irreparable injury from the actions of defendants. Plaintiffs have no adequate remedy at law.

CLAIMS

First Claim

38. The National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*, requires that Federal agencies prepare an environmental-impact statement before taking any "major Federal action significantly affecting the quality of the human environment." 42 U.S.C. 4332(2)(C). The actions that defendants have taken and are expected to take concerning coal development in the Northern Great Plains region, as described in paragraphs 31 and 32 above, are plainly major Federal actions requiring preparation and consideration of an environmental-impact statement because individually, or at least cumulatively, they have an enormous impact on the region's environment.

39. The failure of defendants to prepare and consider a comprehensive environmental-impact statement concerning coal development in the Northern Great Plains region before issuing any coal prospecting permits or mining leases, approving any coal exploration or mining plans, entering into options or contracts for the sale of water, granting water rights, delivering water under existing options or contracts, approving diversion of water from or placement of structures in navigable waterways, granting permits for transmission lines to cross navigable waters, granting right-of-way permits for transmission lines, pipelines, aqueducts or railroads, or taking any other actions concerning coal development in the Northern Great Plains region violates the National Environmental Policy Act.

Second Claim

40. Section 102(2)(A) of NEPA, 42 U.S.C. 4332 (2)(A), requires "all agencies of the Federal Government * * * [to] utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment." Section 102(2)(D), of NEPA, 42 U.S.C. 4332(2)(D), requires "all agencies of the Federal Government * * * [to] study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." The failure of defendants to make systematic interdisciplinary studies of the Northern Great Plains region or to study, develop and describe appropriate alternatives before issuing any coal prospecting permits or mining leases, approving any coal exploration or mining plans, entering into options or contracts for the sale of water, granting water rights, delivering water from existing options or contracts, approving diversion of water from or placement of structures in navigable waterways, granting permits for transmission lines to cross navigable waters, granting right-of-way permits for transmission lines, pipelines, aqueducts, or railroads, or taking any other actions concerning coal development

in the Northern Great Plains region violates the National Environmental Policy Act.

RELIEF

WHEREFORE, plaintiffs pray that this Court:

1. Enter a declaratory judgment that the National Environmental Policy Act is violated if defendants issue any coal prospecting permits or mining leases, approve any coal exploration or mining plans, enter into options or contracts for the sale of water, grant water rights, deliver water under existing options or contracts, approve diversion of water from or placement of structures in navigable waterways, grant permits for transmission lines to cross navigable waters, grant right-of-way permits for transmission lines, pipelines, aqueducts or railroads, or take any other action involving or affecting coal development in the Northern Great Plains region without preparing a comprehensive environmental-impact statement and interdisciplinary studies of coal and coal-related development of the region which meet the requirements of the National Environmental Policy Act.

2. Enjoin defendants from issuing any coal prospecting permits or mining leases, approving any coal exploration or mining plans, entering into options or contracts for the sale of water, granting water rights, approving diversion of water from or placement of structures in navigable waterways, delivering water under existing options or contracts, granting right-of-way permits for transmission lines, pipelines, aqueducts or railroads, granting permits for transmission lines to cross navigable waters, or taking any other action involving or affecting coal development in the Northern Great Plains region without preparing a comprehensive environmental-impact statement and interdisciplinary studies of coal and coal-related development of the region which meet the requirements of the National Environmental Policy Act.

3. Order defendants, prior to issuing any coal prospecting permits or mining leases, approving any coal exploration or mining plans, entering into options or

contracts for the sale of water, granting water rights, delivering water under existing options or contracts, approving diversion of water from or placement of structures in navigable waterways, granting permits for transmission lines to cross navigable waters, granting right-of-way permits for transmission lines, pipelines, aqueducts or railroads, or taking any other action involving or affecting coal development in the Northern Great Plains region to prepare and consider a comprehensive environmental impact statement and to conduct interdisciplinary studies of all aspects of coal and coal-related development in the region which meet the requirements of the National Environmental Policy Act.

4. Determine that plaintiffs are entitled to payment of their attorneys' fees and costs; and

5. Provide such other relief to plaintiffs as the Court may deem just and appropriate.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil No. 1182-73

SIERRA CLUB, ET AL., PLAINTIFFS

v.

ROGERS C. B. MORTON, ET AL., DEFENDANTS

ANSWER

For answer to the complaint, the defendants respectfully show:

First Defense

Answering the numbered paragraphs of the complaint, defendants show:

Introduction

1. Defendants alleged that the complaint fails to comply with Rule 8(a) of the Federal Rules of Civil Procedure in that it does not set forth a claim for relief containing a short and plain statement of the claim and it violates Rule 8(e)(1) in that each averment of the pleading is not simple, concise, and direct as required. Instead, the complaint consists of 24 pages containing 40 separately numbered paragraphs, virtually every one of which, contrary to the Federal Rules of Civil Procedure, is composed of multi-sentence averments of mixed factual allegations and argumentative conclusions. The complaint, in essence, presents a polemic diatribe founded upon argumentative statements of conjecture and mere speculation and properly should be stricken.

For the foregoing reasons, it is not feasible for the defendants to fully comply with Rule 8(b) by having all of the denials "fairly meet the substance of the averments denied". However, in the following answers, ad-

missions, denials, and affirmative allegations in confession and avoidance, defendants will endeavor to do so to the best of their ability.

Therefore, answering paragraph one, defendants admit that vast coal reserves exist in the States of Montana, Wyoming, North Dakota, and South Dakota, that federal agencies have made decisions concerning the prospecting and leasing of the coal reserves, and that development of those reserves of the type described in the second sentence of paragraph one has already occurred and may continue to occur. Defendants also admit that no single environmental impact statement relating to the entire development of the resources of all four states has been made. Defendants affirmatively allege that none is required. Each and every one of the remaining allegations in paragraph 1 is denied.

Jurisdiction

2. Defendants deny that the matter in controversy insofar as plaintiffs' interests are concerned exceeds \$10,000 as alleged. The remaining allegations in paragraph 2 constitute conclusions of law, which although requiring no answer, are denied.

3-9. The defendants are without information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 3-9 and those allegations are, therefore, denied.

10. The allegations in paragraph 10 constitute mixed averments and conclusions. These allegations and conclusions are denied.

Defendants

11. Rogers C. B. Morton is the Secretary of the Interior. The remaining allegations and conclusions are denied.

12. Denied. The Director of the Bureau of Land Management is not Burton W. Silcock but is Curt Burkland.

13. Marvin Franklin is Assistant to the Secretary for Indian Affairs. The remaining allegations and conclusions are denied.

14. Gilbert G. Stamm is Commissioner of the Bureau of Reclamation as alleged. The remaining allegations and conclusions are denied.

15. Vincent E. McKelvey is Director of the United States Geological Survey as alleged. The remaining allegations and conclusions are denied.

16-19. The individual defendants named are officers of the United States and serve in the capacity alleged. The remaining allegations and conclusions are denied.

Facts

20. Admitted.

21. Defendant admits that the area contains vast coal reserves within the Fort Union formation, that strippable deposits containing reserves of about 34 billion tons have been identified, of which 19 billion tons were considered to be economically recoverable, and that interest has developed in developing these coal reserves. The allegations not expressly admitted are denied.

22. Defendants affirmatively allege that the North Central Power study is merely a study. The findings and recommendations contained in that study are not considered to be the criteria for future Federal action. The North Central Power Study was divided into three phases. Phase I was to develop the costs for a general overall plan for the coordinated development of electric power supply in the North Central United States. Phase I was not a plan for development and contained no recommendations for development. Phase II required responses from interested utilities indicating each utility's interest in participating in the development followed by the revision of Phase I to reflect the interest in participation. Phase III was to relate to the implementation of contract arrangements and actual construction. Only Phase I of the study was completed. No utility indi-

cated an interest in further participation. Phases II and III of the study were therefore not undertaken.

Defendants affirmatively allege there is no present or proposed federal plan or program for coal development on federal lands in the region.

The North Central Power Study stated that the areas under study had proven coal reserves adequate to supply over 200,000 MW¹ of thermal generation; even though that would require only a small part of the total resource potential. However, an assumed development level of only 53,000 MW (50,000 thermal and 3,000 hydro) was studied as a reasonable ultimate development. For transportation study purposes, generation levels of 3,000 MW, 10,000 MW, 20,000 MW, 40,000 MW, and 43,000 MW were considered. Individual plants, sizes or locations were not determined by the study; however, it was necessary to make size and location assumptions to test technical feasibility.

The study considered several EHU² transmission lines to the eastern area bounded by St. Louis and Minneapolis. The study did not consider a transmission system to the far west such as Portland and Seattle area. The allegations of paragraph 22 not expressly admitted are denied.

23. Defendants affirmatively allege that the Appraisal Report on Montana-Wyoming Aqueducts prepared by the Bureau of Reclamation projected that water requirements of about 2.6 million acre feet may be required annually to meet a development level that may be attained in less than 30 years, and that a development of a generation capacity of 50,000 MW of thermal electric power could require cooling water of about 8,000 acre feet annually. The Appraisal Report on Montana-Wyoming Aqueducts was prepared in response to requests by energy fuel authorities and electric power

¹ MW = megawatt, 1 million watts or 1,000 kilowatts.

² Ultra-high voltage.

suppliers for information on the amount of water available from existing reservoirs and unregulated streams, as well as potential reservoirs, and the feasibility of moving large amounts of water from sources to points of possible use. The Appraisal Report on Montana-Wyoming Aqueducts did not propose or recommend construction of aqueducts, dams, or reservoirs, and concluded that additional studies of economic, social and environmental effects were required prior to development of firm plans. The allegations in paragraph 23 not expressly admitted are denied.

In further answer to the allegations in paragraph 23, the defendants allege that the Bureau of Reclamation, through a representative acting as chairman of the Task Force on Water, did estimate that 855,000 acre-feet of water would be required for cooling 50,000 MW of coal fired generation. The remainder of 2.6 million acre-feet was not an estimate, but an indication of probable use based on applications for water filed with the Bureau of Reclamation by energy and coal company officials. From continuing applications made to the Bureau, and with other applications for water made to the Corps, and the States of North Dakota and Montana, the indication for industrial water needs annually within the Fort Union Coal Region continues to increase. The Montana-Wyoming Aqueducts report was an appraisal of storage requirements and pipeline costs required to move water to various coal areas within the Region. It was an appraisal of the water situation and probable cost of water supplies. The report was not a plan and did not recommend any developments to be undertaken.

24. Denied.

25. In answer to the allegation in paragraph 25, defendants allege that there are no present federal proposals "for exploiting the area's coal reserves" as alleged. The remaining allegations in paragraph 25 are conjectures and suppositions. The defendants are aware of only one firm proposal for a gasification plant which

was submitted and rejected by the Indian owners of the lands involved. Those allegations not admitted are denied.

26(a). Defendants deny that the Bureau of Indian Affairs has issued leases and permits as alleged. That Bureau does not have authority to issue such leases or permits. Defendants affirmatively allege that such permits and leases as have been issued and which cover Indian lands are private documents negotiated by the respective tribes and merely approved or subject to approval by the Bureau of Indian Affairs. Defendants are without knowledge sufficient to form a belief as to the truth or falsity of allegations relating to Wyoming and Montana and the Burlington-Northern Railroad and other private owners. The other allegations relating to the Bureau of Land Management are admitted.

26(b). Defendants admit that strip mines are operating in northwest Wyoming and southeastern Montana. The allegations of 26(b) not expressly admitted are denied.

26(c). Defendants admit that two coal burning electric power plants are under construction near Colstrip, Montana. The allegations of 26(c) not expressly admitted are denied.

26(d)-(e). The defendants are without information sufficient to form a belief as to the truth or falsity of the allegations in these two paragraphs and they are, therefore, denied.

26(f). Defendants admit that one proposal has been made to the Northern Cheyenne Tribe but defendants assert that it was rejected.

26(g). Defendants are without information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph.

26(h). Defendants admit that contracts for the sale of 700,000 acre feet from the existing Bighorn Lake and Boysen Reservoir have been executed and that energy companies have indicated an interest in obtaining an additional 1.0 million acre feet annually. The

allegations of 26(h) not expressly admitted are denied.

26(i) Defendants are without information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph.

26(j). Defendants admit the allegations of 26(j) except that defendants are without information sufficient to form a belief as to the truth or falsity of the conclusion that the proposed line is the longest to be constructed in the United States in over 40 years.

27(a)-(g). Denied.

28. These argumentative allegations are denied. In further answer to the allegations in paragraph 28, defendants allege the underground mining of coal seams which are also amenable to development by surface mining methods would be very wasteful from a recovery standpoint, and would lead to unpredictable surface damage both as to time and magnitude. Permanent and potential damage to the surface by underground mining is a widely recognized fact. That type damage to the surface is not easily or readily reclaimed. Also, the hazards inherent with underground mining would be present. In paragraph 24 of the complaint, the use of slurry pipelines is decried. Yet, in paragraph 28, it is recommended by plaintiffs.

29. Denied.

30. Denied. Defendants allege that environmental impact statements covering applications involving major federal actions significantly affecting the quality of the human environment are being prepared and will be circulated, that defendants intent to prepare studies and environmental impact statements prior to taking any major federal action within their respective spheres of responsibility which will have a significant effect upon the human environment and that such statements will consider the environmental impacts resulting from those actions and the reasonable alternatives to the proposed actions.

31. Defendants admit that coal prospecting permits have already been issued and that options for sale of

water have been executed as alleged. The remaining allegations are denied.

32. Defendants admit that decisions concerning the degree and kind of development in the region will be made, that the Bureau of Land Management and the Bureau of Indian Affairs have issued or approved coal leases for thousands of acres of land in the region, that these agencies as well as the Geological Survey have continuing authority over reclamation and that the Bureau of Land Management has authority consistent with Departmental policy to issue additional coal prospecting permits, coal leases and other permits. The allegations of paragraph 32 not expressly admitted are denied.

33. The allegations in the first sentence of paragraph 33 constitute conclusions of law and are denied. As previously stated, the remaining allegations are generally admitted.

34. In answer to the allegations in paragraph 34, defendants allege that studies are being conducted and environmental impact statements are being prepared as a preliminary to any proposed major federal action which will have a significant impact upon the environment. The remaining allegations are denied.

35. Defendants admit that the State of Montana has considered development of the area as alleged in the first sentence of paragraph 35. Defendants are without information sufficient to form a belief as to the truth or falsity of the allegations relating to Wyoming and North Dakota and those allegations are, therefore, denied.

36. Defendants admit the quotations from the letters of March 24, 1972, and May 2, 1972, as alleged. Defendants deny the remaining allegations in that paragraph and affirmatively allege that Northern Great Plains Resources Program Study has commenced.

37. Denied.

Claims

First Claim

38-39. Denied.

Second Claim

40. Denied.

41. Each and every allegation in paragraphs 1 through 40 which has not been admitted is denied.

Second Defense

For their second defense, defendants assert that the complaint fails to state a claim upon which relief can be granted.

Third Defense

The allegations in the complaint do not present a case or controversy but instead, seek an advisory judgment based upon conjectures and speculation. No justiciable issues are presented and the plaintiffs, therefore, are not entitled to the relief sought.

Fourth Defense

The complaint fails to allege that federal agency action has been taken or is threatened by the defendants. The Court, therefore, lacks jurisdiction of the matter under the Administrative Procedure Act.

Fifth Defense

The complaint does not allege that any defendant has failed or refused to perform a clear duty owed to plaintiffs. No facts, therefore, are asserted upon which to justify either mandamus or the issuance of an injunction as plaintiffs request.

Sixth Defense

Since defendants do not intend to take any major federal action which will have a significant impact upon

the environment without preparing and filing an environmental impact statement, this action is premature.

Seventh Defense

The allegations of the complaint do not present a reviewable issue with respect to lands owned by the Indians. Plaintiffs do not purport to represent the Indians and fail to claim or demonstrate that they or their members will be injured by activities occurring on lands belonging to the Indians. No justiciable issues are presented and the plaintiffs therefore are not entitled to relief sought with respect to Indian lands. Further, plaintiffs lack standing to question activities in connection with Indian lands.

WHEREFORE, defendants request that the action be dismissed and that judgment be entered in favor of the defendants.

Respectfully submitted,

/s/ Herbert Pittle
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EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1182-73

SIERRA CLUB, ET AL., PLAINTIFFS

vs.

ROGERS C. B. MORTON, ET AL., DEFENDANTS

ANSWER OF INTERVENOR
PEABODY COAL COMPANY

For its answer, the intervenor, Peabody Coal Company, admits, denies and alleges as follows:

I

Admits that vast coal reserves exist in the states of Montana, Wyoming, North Dakota and South Dakota, and federal agencies have made many decisions concerning the development of such resources; denies the remaining allegations contained in Paragraph 1.

II

Denies that this Court has jurisdiction over this action. The allegations of the complaint do not allege a justiciable controversy, because plaintiffs seek an advisory judgment. Jurisdiction does not exist under the Administrative Procedure Act, 5 U.S.C. 701-706 because plaintiffs do not seek to review agency action. The complaint does not state a claim for an injunction or mandamus.

III

Is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 3, 4, 5, 6, 7, 8, 9, and 10.

IV

Admits the allegations of Paragraphs 11, 12, 13, 14, 15, 16, 17, 18, and 19.

V

Admits that the area described in the complaint as the Northern Great Plains region contains vast coal reserves, and that substantial interest exists in the development of such deposits and that a North Central Power Study and an Appraisal Report on Montana-Wyoming Aqueducts have been prepared. Intervenor is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraphs 20, 21, 22, 23, and 24.

VI

Denies the truth of the allegations of Paragraph 25.

VII

Admits that intervenor Peabody Coal Company has approximately two billion tons of coal under its control in Montana and almost one billion tons in Wyoming. In addition, intervenor has in excess of 300,000,000 tons of coal under its control in North Dakota. Intervenor also has two contracts with the United States Bureau of Reclamation for a total of \$80,000 acre feet of water to be delivered annually from the Yellowtail Reservoir, located in Wyoming and Montana, and available for industrial use in Montana. Intervenor operates its Big Sky Mine in Montana and ships coal therefrom by rail to the Midwest. Intervenor has committed substantial coal deposits to a gasification plant to be located on the Northern Cheyenne Indian Reservation in Montana and to another gasification plant to be located in Wyoming. Intervenor has also made proposals to provide coal to electric utilities around the country. Peabody Coal Company is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 26.

VIII

Denies the truth of the allegations of Paragraph 27.

IX

Admits that alternatives exist in the development of the coal resources of the region, and denies the truth of the remaining allegations of Paragraph 28.

X

Denies the truth of the allegations of Paragraph 29, and alleges that the Court is without jurisdiction to define the scope of the study sought by plaintiffs.

XI

Denies the truth of the allegations of Paragraph 30.

XII

Is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 31, 32, 33, 34, 35, and 36, except that the studies referred to in Paragraph 33 are underway or have been made.

XIII

Denies the truth of the allegations of Paragraphs 37, 38, 39, and 40.

XIV

FIRST AFFIRMATIVE DEFENSE

Intervenor alleges that the complaint fails to state a claim upon which relief can be granted.

XV

SECOND AFFIRMATIVE DEFENSE

Intervenor alleges that the complaint does not present a case of actual controversy but rather seeks an advisory judgment, and no justiciable issues are presented.

XVI

THIRD AFFIRMATIVE DEFENSE

Intervenor alleges that the complaint does not allege that wrongful agency action has been taken, or is threatened, and the Court does not have jurisdiction under the Administrative Procedure Act, 5 U.S.C. § 701 et seq.

XVII

FOURTH AFFIRMATIVE DEFENSE

Intervenor alleges that the complaint does not state that any defendant has failed or refused to perform a duty owed to plaintiffs, and no facts are alleged to justify mandamus or the issuance of an injunction.

HAVING FULLY DEFENDED, intervenor Peabody Coal Company prays that plaintiffs take nothing by their complaint, that intervenor recover its costs herein incurred, and that this Court grant intervenor such other and further relief as the Court deems just.

Date: July 16, 1973.

Respectfully submitted,

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EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

No. 1182-73

SIERRA CLUB, ET AL., PLAINTIFFS

vs

ROGERS C. B. MORTON, ET AL., DEFENDANTS

PATRICK J. McDONOUGH, APPLICANT FOR INTERVENTION

INTERVENOR'S ANSWER

* * *

PATRICK J. McDONOUGH, Intervenor herein, for his pleading in intervention, answers the Complaint on file and alleges as follows:

I. ANSWER TO FIRST CLAIM

First Defense

1. The First Claim of the Complaint fails to state a claim upon which relief can be granted.

Second Defense

2. Answering paragraph 1 of the Complaint, Intervenor admits that coal reserves in the region referred to are extensive; denies that there have been any unlawful omissions in the preparation of environmental statements.

3. Answering paragraph 2 of the Complaint, Intervenor denies that jurisdiction is well founded; denies that the matter in controversy exceeds \$10,000.00.

4. Answering paragraphs 3 through 9 of the Complaint, Intervenor alleges that he is without knowledge regarding the legal status, composition, and membership of the plaintiffs, and therefore denies the allegations contained in these paragraphs.

5. Answering paragraph 10 of the Complaint, Intervenor alleges that he is without knowledge as to the membership of the plaintiff organizations, and therefore denies the allegations contained in paragraph 10.

6. Answering paragraphs 11 through 19 of the Complaint, Intervenor denies that the duties of the offices therein mentioned are as broad as alleged in the Complaint; denies that the officers therein mentioned have made unlawful omissions in the execution of their duties as they relate to the relief prayed for in the Complaint.

7. Answering paragraphs 20 through 37 of the Complaint, Intervenor admits that coal reserves are contained in the property mentioned in the Complaint; is without knowledge of the detailed statistics set out in these paragraphs of the Complaint, and therefore denies the same; denies that the actions or decisions of the defendants will result in severe harm in the environment of the property specified in the Complaint.

8. Answering paragraphs 38 and 39 of the Complaint, Intervenor denies that 42 U.S.C. Section 4332(2) (c) is quoted within its context of meaning; denies that the defendants have acted unlawfully; alleges that paragraph 39 of the Complaint contains no allegations at all.

Third Defense

9. The Complaint violates Rule 8(a)(2), Federal Rules of Civil Procedure, and therefore entitles plaintiffs to no relief.

Fourth Defense

10. No actual controversy exists, and the plaintiffs are therefore entitled to no relief under their Complaint.

II. ANSWER TO SECOND CLAIM

First Defense

11. The Second Claim of the Complaint fails to state a claim upon which relief can be granted.

Second Defense

12. Intervenor reasserts paragraphs 2 through 7, above, as though fully set out herein.

13. Answering paragraph 40 of the Complaint, Intervenor admits that 42 U.S.C. Section 4332(2) requires certain action on the part of federal agencies, to the fullest extent possible; denies that the defendants have acted unlawfully; alleges that paragraph 40 of the Complaint contains no allegation at all.

Third Defense

14. The Complaint violates Rule 8(a)(2), Federal Rules of Civil Procedure, and therefore entitles plaintiffs to no relief.

Fourth Defense

15. No actual controversy exists, and the plaintiffs are therefore entitled to no relief under their Complaint.

WHEREFORE, Intervenor Patrick J. McDonough prays that this Court:

1. Dismiss the Complaint on file herein.
2. Provide such other relief to the Intervenor as the Court may deem just and appropriate.

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By /s/ Max N. Edwards
MAX N. EDWARDS

Attorney for Applicant for
Intervention,
Patrick J. McDonough

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1182-73

SIERRA CLUB ET AL., PLAINTIFFS

vs

ROGERS C. B. MORTON, ET AL., DEFENDANTS

THE CROW TRIBE OF INDIANS, INTERVENOR-DEFENDANT

SEPARATE ANSWER OF THE CROW
TRIBE OF INDIANS

For its answer to the First and Second Claims of the Complaint this defendant, The Crow Tribe of Indians of the Crow Reservation, Crow Agency, Montana, admits, denies and alleges:

First Defense

1. The First and Second Claims of the Complaint fail to state claims upon which relief may be granted.

Second Defense

2. Answering paragraphs 1 through 10, this defendant is, at this time, without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

3. Answering paragraph 11, this defendant denies the allegations contained therein, insofar as they state that the Secretary of the Interior has the "authority and responsibility . . . under 25 U.S.C. 396 *et seq.*, to lease lands in any Indian reservation for mining purposes . . ." for the reason that the statutes, regulations and practices which govern issuance of mining leases affecting Indian lands grant leasing authority and responsibility to the appropriate tribal council or other

governing body subject only to the requirement that such leasing conform to the rules and regulations adopted by the Secretary of the Interior and that such leases be approved by the Secretary of the Interior. This defendant is, at this time, without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said paragraph 11.

4. Answering paragraphs 12 through 37, this defendant is, at this time, without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

5. Answering paragraph 38, this defendant admits that "The Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*, requires that Federal agencies prepare an environmental-impact statement before undertaking any 'major federal actions significantly affecting the quality of human environment.' 42 U.S.C. 4332(2)(C)" but denies each and every other allegation contained therein.

6. Answering paragraph 39 this defendant denies each and every allegation contained therein.

7. Answering paragraph 40, this defendant admits that "Section 102(2)(A) of NEPA, 42 U.S.C. 4332(2)(A), required 'all agencies of the federal government . . . [to] utilize a systematic, interdisciplinary approach which will insure the intergrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment.' Section 102(2)(D), of NEPA, 42 U.S.C. 4332(2)(D), requires 'all agencies of the federal government . . . [to] study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative use of available resources.'" but denies each and every other allegation contained therein.

8. Answering all allegations of the Complaint which either state or infer that the substantive or procedural provisions of the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*, (NEPA) apply to the functions of the United States of America or its agencies acting in their capacity as trustee of Indian lands, denies, the same for the reasons that:

(a) Lands owned by various individual Indians and tribes of Indians are private lands in every respect with the sole exception that the United States of America has assumed the obligation of trustee with regard to the same which trust is to be administered for the best interest and benefit of the Indian owners.

(b) NEPA does not regulate the rights of private landowners to use or dispose of their property, but rather applies specifically to federal actions.

(c) Application of NEPA to the functions of the United States of America or its agencies, acting in its capacity as trustee of Indian land, will seriously affect present and future generations of Indian people by causing the trustee to restrict alienation of Indian lands for reasons other than the best interest and benefit of the Indian owners (in that such restrictions will be imposed for the benefit of the non-Indian community), all of which would violate the moral and legal obligation of the trustee to its Indian beneficiaries.

(d) Application of the NEPA to the functions of the United States of America or its agencies, acting in its capacity as trustee of Indian lands, will deny the Indian owners equal protection of the laws for the reason that such application will place restrictions upon alienation of Indian lands which do not exist upon alienation of non-Indian private lands.

(e) Functions of the United States of America, or its agencies, acting in its capacity as trustee of Indian lands, are not "major federal action" as the term is used in Section 102(2)(C) of NEPA.

Third Defense

9. The Complaint violates Rule 8(A)(2) and Rule 8(e)(1), Federal Rules of Civil Procedure and therefore entitles the plaintiff to no relief.

WHEREFORE, this defendant prays for judgment as follows:

(a) Dismissing the plaintiffs' Complaint insofar as it requests that this court apply NEPA to the functions of the United States of America, or its agencies, acting in its capacity as trustee of Indian land.

(b) Providing such other relief to this defendant as the court may deem just and appropriate.

DATED this 10th day of Aug., 1973.

EVALYN B. CARSON
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The Crow Tribe of Indians
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Billings, Montana

Stephen N. Shulman
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By /s/ Evalyn B. Carson
EVALYN B. CARSON
Attorneys for The Crow Tribe
of Indians

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1182-73

SIERRA CLUB, ET AL., PLAINTIFFS

v.

ROGERS C. B. MORTON, ET AL., DEFENDANTS

ANSWER OF INTERVENORS PUGET SOUND
POWER & LIGHT COMPANY, PORTLAND GEN-
ERAL ELECTRIC COMPANY AND THE WASH-
INGTON WATER POWER COMPANY

For their answer, intervenors Puget Sound Power & Light Company, Portland General Electric Company and The Washington Water Power Company (Electric Companies) admit, deny and allege as follows:

I.

Admit that extensive coal reserves exist in the four-State region of northwestern Wyoming, eastern Montana, western North Dakota, and western South Dakota named in the complaint, that certain development of certain such reserves has begun or is expected, and that federal agencies may have made certain decisions concerning such development. Intervenors deny all remaining allegations of Paragraph 1.

II.

Respecting Paragraph 2, deny that this court has jurisdiction over the matters set forth in the complaint. Plaintiffs seek an advisory judgment. Jurisdiction does not exist under the Administrative Procedure Act, 5 U.S.C. 701-706, as plaintiffs are not seeking judicial review of agency action. The complaint does not state a claim for an injunction or mandamus.

III.

Are without knowledge or information sufficient to form a belief regarding the truth of the allegations of Paragraphs 3 through 9.

IV.

Admit that plaintiffs sue on behalf of their members as well as themselves and that many of their members are citizens, residents and landowners in the Northern Great Plains Region, and deny all other allegations contained in Paragraph 10.

V.

Admit the allegations set forth in Paragraphs 11 through 20.

VI.

Admit that the four-State region named in the complaint contains coal reserves, that certain of such coal is of low sulphur content, and that interest exists in developing certain of such coal. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 21.

VII.

Admit that a North Central Power Study has been prepared, and that such Study projects the construction of certain electric power plants and transmission lines. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 22.

VIII.

Admit that an Appraisal Report on Montana-Wyoming Aqueducts to provide water for the four-State region named in the complaint has been prepared, and that

electric power plants require water for operation. Intervenorors are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 23.

IX.

Are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 24.

X.

Deny that the various aspects of the proposal heretofore alleged in the complaint are closely interrelated. Intervenorors admit that coal can be converted to electricity and other fuels, and that use of electricity in markets distant from its generation requires electric transmission lines. Intervenorors are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 25.

XI.

With respect to Paragraph 26(c), admit that the said two Colstrip mine mouth 700 megawatt power plants and associated facilities are planned by intervenor Electric Companies; that said plants are to be built as additions to, and that Puget Sound Power & Light Company has an ownership interest in, the said two Colstrip mine mouth 350 megawatt power plants and associated facilities under construction; that The Montana Power Company has segments under construction of transmission lines to extend from Colstrip; and that said Company has rights to more than sufficient water from the Yellowstone River for all four said Colstrip plants. With respect to Paragraphs 26(a) and (b), admit that Western Energy Company holds leases for the mining of coal owned by the United States and leased from others in the Port Union deposits named in the complaint, and that certain said coal will be mined at

Colstrip and supplied by Western Energy Company as fuel for the aforesaid four Colstrip power plants. Intervenorors are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 26.

XII.

Deny the allegations of Paragraph 27.

XIII.

Respecting Paragraph 28, admit that alternatives to development of the coal reserves named in the complaint may exist, and that said coal development can be accomplished in a variety of ways.

XIV.

Respecting Paragraph 29, admit that a careful and comprehensive study of available alternatives prior to development of the area's coal reserves would provide protection of the environment, and that such study would consider numerous issues.

XV.

Respecting Paragraph 30, admit that development of the area's coal reserves raises environmental questions requiring answers. Intervenorors deny that such questions have not been and are not being thoroughly studied.

XVI.

Are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 31.

XVII.

Admit that defendants have authority, responsibility and control over certain lands, minerals and activities in the four-State region named in the complaint, and

that defendants' decisions in these cases coming before them in the future respecting such will be important. Intervenor is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 32.

XVIII.

Admit that the United States has treated the coal development of this region as requiring comprehensive planning, as alleged in Paragraph 33.

XIX.

Are without knowledge or information sufficient to form a belief as to the truth of the allegation that no environmental impact statement has been prepared concerning any individual federal act relating to such coal development, and deny the remaining allegations of Paragraph 34.

XX.

Admit that the Montana Environmental Quality Council and the Montana Coal Task Force have made the reports named in Paragraph 35, and are without knowledge or information sufficient to form a belief as to the truth of the other allegations of Paragraphs 35 and 36.

XXI.

Deny all allegations of Paragraph 37.

XXII.

Admit that the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et. seq.*, requires federal agencies to prepare an environmental impact statement before taking certain actions, and are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 38.

XXIII.

Deny the allegations of Paragraph 39.

XXIV.

Admit that the National Environmental Policy Act requires federal agencies to utilize interdisciplinary approaches and describe appropriate alternatives, and deny the remaining allegations of Paragraph 40.

XXV.

FIRST DEFENSE

Intervenor alleges that the complaint fails to state a claim upon which relief can be granted.

XXVI.

SECOND DEFENSE

Intervenor alleges that the complaint does not present a case of actual controversy, but rather seeks an advisory judgment, and no justiciable issues are presented.

XXVII.

THIRD DEFENSE

Intervenor alleges that the complaint does not allege that wrongful agency action has been taken, or is threatened, and the court does not have jurisdiction under the Administrative Procedure Act, 5 U.S.C. § 701, *et. seq.*

XXVIII.

FOURTH DEFENSE

Intervenor alleges that the complaint does not state that any defendant has failed or refused to perform a duty owed to plaintiffs, and that no facts are alleged to justify issuance of an injunction or other mandatory order.

Date: August 16, 1973

Respectfully submitted,

/s/ James D. O'Brien
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Attorney for Puget Sound Power
& Light Company, Portland Gen-
eral Electric Company and The
Washington Water Power Com-
pany, Intervenors.

/s/ Wendell Lund
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/s/ Joseph B. Levin
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1182-73

SIERRA CLUB, ET AL., PLAINTIFFS

vs.

ROGERS C. B. MORTON, ET AL., DEFENDANTS

ANSWER OF INTERVENOR
CITIES SERVICE GAS COMPANY

For its answer, intervenor Cities Service Gas Company
admits, denies and alleges as follows:

I.

Admits that extensive coal reserves exist in the four-
state region of northeastern Wyoming, eastern Montana,
western North Dakota, and western South Dakota
named in the complaint, that certain development of cer-
tain such reserves has begun or is expected, and that fed-
eral agencies may have made certain decisions concerning
such development. Intervenor denies all remaining alle-
gations of Paragraph 1.

II.

Respecting Paragraph 2, denies that this Court has
jurisdiction over the matters set forth in the complaint.
Plaintiffs seek an advisory judgment. Jurisdiction does
not exist under the Administrative Procedure Act, 5
U.S.C. 701-706, as plaintiffs are not seeking judicial re-
view of agency action. The complaint does not state a
claim for an injunction or mandamus.

III.

Is without knowledge or information sufficient to form
a belief regarding the truth of the allegations of Para-
graphs 3 through 9.

IV.

Admits that plaintiffs sue on behalf of their members as well as themselves and that many of their members are citizens, residents and landowners in the Northern Great Plains Region, and denies all other allegations contained in Paragraph 10.

V.

Is without knowledge or information sufficient to form a belief regarding the truth of the allegations of Paragraphs 11 through 20.

VI.

Admits that the four-state region named in the complaint contains coal reserves, that certain of such coal is of low sulphur content, and that interest exists in developing certain of such coal. Intervenor is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 21.

VII.

Is without knowledge or information sufficient to form a belief regarding the truth of the allegations of Paragraph 22.

VIII.

Intervenor is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 23.

IX.

Admits that some plans and proposals exist for coal gasification plants and those plants will require water. Intervenor is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 24.

X.

Denies that the various aspects of the proposal heretofore alleged in the complaint are closely interrelated.

Intervenor admits that coal can be converted to gas and other fuels, and that use of gas in markets distant from its conversion requires pipelines. Intervenor is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 25.

XI.

Admits with respect to Paragraph 26(e) that Intervenor and Northern Natural Gas Company announced plans for four coal gasification plants in northern Wyoming and southeastern Montana and for a 700-mile gas pipeline. Admits with respect to Paragraph 26(a) that some leases and permits for coal exploration, mining and development have been issued by federal and private owners within the four state area. Intervenor is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 26.

XII.

Denies the allegations of Paragraph 27.

XIII.

Respecting Paragraph 28, admits that alternatives to development of the coal reserves named in the complaint may exist, and that said coal development can be accomplished in a variety of ways.

XIV.

Admits that a careful and comprehensive study of available alternatives prior to development of the area's coal reserves may consider numerous issues. Intervenor denies the remaining allegations in Paragraph 29.

XV.

Respecting Paragraph 30, admits that development of the area's coal reserves may raise environmental questions. Intervenor denies that such questions have not been and are not being thoroughly studied.

XVI.

Is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 31.

XVII.

Admits that defendants have authority, responsibility and control over certain lands, minerals and activities in the four-state region named in the complaint, and that defendants' decisions in these cases coming before them in the future respecting such will be important. Intervenor is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 32.

XVIII.

Is without knowledge or information sufficient to form a belief regarding the truth of the allegations of Paragraph 33.

XIX.

Is without knowledge or information sufficient to form a belief as to the truth of the allegation that no environmental impact statement has been prepared concerning any individual federal act relating to such coal development, and deny the remaining allegations of Paragraph 34.

XX.

Is without knowledge or information sufficient to form a belief regarding the truth of the allegations of Paragraph 35 and 36.

XXI.

Denies all allegations of Paragraph 37.

XXII.

Admits that the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*, requires federal agencies to prepare an environmental impact statement before taking certain actions, and are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 38.

XXIII.

Denies the allegations of Paragraph 39.

XXIV.

Admits that the National Environmental Policy Act requires federal agencies to utilize interdisciplinary approaches and describe appropriate alternatives, and denies the remaining allegations of Paragraph 40.

XXV.

First Defense

Intervenor alleges that the complaint fails to state a claim upon which relief can be granted.

XXVI.

Second Defense

Intervenor alleges that the complaint does not present a case of actual controversy, but rather seeks an advisory judgment, and no justiciable issues are presented.

XXVII.

Third Defense

Intervenor alleges that the complaint does not allege that wrongful agency action has been taken, or is threatened, and the court does not have jurisdiction under the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.*

XXVIII.

Fourth Defense

Intervenor alleges that the complaint does not state that any defendant has failed or refused to perform a duty owed to plaintiffs, and that no facts are alleged to justify issuance of an injunction or other mandatory order.

Respectfully submitted,

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By /s/ Harold L. Talisman
Attorney for
Cities Service Gas Company

September 12, 1973

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1182-73

SIERRA CLUB, ET AL., PLAINTIFFS

v.

ROGERS C. B. MORTON, ET AL., DEFENDANTS

ARKANSAS POWER & LIGHT COMPANY
9th and Louisiana Streets
Little Rock, Arkansas 72203
(501) 372-4311

OKLAHOMA GAS AND ELECTRIC COMPANY
321 North Harvey
Post Office Box 321
Oklahoma City, Oklahoma 73101
(405) 232-3366

APPLICANTS FOR INTERVENTION

ANSWER OF INTERVENORS
ARKANSAS POWER & LIGHT COMPANY AND
OKLAHOMA GAS AND ELECTRIC COMPANY

For its answer, intervenor Arkansas Power & Light Company and Oklahoma Gas and Electric Company admit, deny and allege as follows:

I

Admit that extensive coal reserves exist in northeastern Wyoming, eastern Montana, western North Dakota and western South Dakota, that commercial development of some such reserves is expected within the next few years, and that federal agencies may have made many decisions concerning the development of such reserves; deny that there have been any unlawful emissions in the preparation of environmental impact statements or interdisciplinary studies; lack sufficient information and

knowledge to form a belief as to the remaining allegations of Paragraph 1.

II

Deny that this Court has jurisdiction over this action. The allegations of the complaint do not allege a justiciable controversy because plaintiffs seek an advisory judgment only. Jurisdiction does not exist under the Administrative Procedure Act, 5 U.S.C.A. §§ 701-706, because plaintiffs do not seek court review of agency action. The complaint does not state a claim for an injunction or mandamus.

III

Lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 3, 4, 5, 6, 7, 8, and 9.

IV

Lack knowledge or information sufficient to form a belief as to whether plaintiffs are authorized to sue on behalf of their members as well as themselves, whether they have many members who are residents and land owners in the Northern Great Plains region, or whether any such members are employed as ranchers or farmers or in recreational industries; admit that plaintiff organizations have members who may visit the Northern Great Plains region, and deny all other allegations contained in Paragraph 10.

V

Admit the allegations set forth in Paragraphs 11, 12, 13, 14, 15, 16, 17, 18, and 19.

VI

Admit that the area described in the complaint as the Northern Great Plains region contains vast reserves of coal with relatively low sulfur content, and that substantial interest exists in the development of such deposits; lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations of Paragraphs 20 and 21.

VII

Admit that the Department of Interior has prepared reports entitled "North Central Power Study" and "Appraisal Report on Montana-Wyoming Aqueducts" which set forth the projections and analyses described in Paragraphs 22 and 23; lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraphs 22 and 23.

VIII

Lack sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 24.

IX

Admit that coal can be converted into electricity, gas, liquid fuel or petrochemicals at mine-mouth facilities and that appropriate transportation facilities would be needed for the transportation of these products to distant markets, or, alternatively, that the coal might be shipped directly to other locations for conversion near such markets, denies that any of the proposals as may exist for commercial development of the coal reserves in the Northern Great Plains region are interrelated; lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 25.

X

Lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 26.

XI

Deny the truth of the allegations of Paragraph 27.

XII

Admit that numerous possible alternatives exist relating to the commercial development of the coal reserves of the Northern Great Plains region, as alleged in Paragraphs 28 and 29, one of which is the transportation of

coal for conversion and use outside the region after it is mined; admit the allegation of Paragraph 29 that a careful and comprehensive study of alternatives for commercial development of the coal reserves throughout the Northern Great Plains region could consider numerous issues; deny that any such study is needed to provide protection for the environment or is required by law.

XIII

Deny the truth of the allegations of Paragraph 30.

XIV

Admit that the federal agency defendants have authority over certain lands, minerals and activities relating to the coal reserves in the Northern Great Plains region, and that any decisions which they have made or will be making within their authority will be important to the commercial development of such coal reserves; lack sufficient information and knowledge to form a belief as to the remaining allegations in Paragraphs 31 and 32.

XV

Admit that the studies identified in Paragraph 33 have been completed or are underway; deny that the United States has treated the coal development of the Northern Great Plains region as requiring comprehensive planning.

XVI

Lack sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraphs 34, 35, and 36.

XVII

Deny the truth of the allegations in Paragraph 37.

XVIII

Admit that the National Environmental Policy Act of 1969, 42 U.S.C.A. §§ 4321 *et seq.*, requires that Federal agencies prepare an environmental impact statement before taking any "major Federal action significantly af-

fecting the quality of the human environment"; deny the truth of the remaining allegations of Paragraph 36.

XIX

Deny the truth of the allegations in Paragraph 39.

XX

Admit that the plaintiffs have correctly quoted from the National Environmental Policy Act of 1969 in Paragraph 40; deny the truth of the remaining allegations in Paragraph 40.

FIRST AFFIRMATIVE DEFENSE

Intervenors allege that the complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Intervenors allege that the complaint does not present a case of actual controversy, but rather seeks an advisory judgment, and no justiciable issues are presented.

THIRD AFFIRMATIVE DEFENSE

Intervenors allege that the complaint does not allege that wrongful agency action has been taken, or is threatened, and the Court does not have jurisdiction under the Administrative Procedure Act, 5 U.S.C.A. §§ 701 *et seq.*

FOURTH AFFIRMATIVE DEFENSE

Intervenors allege that the complaint does not state that any defendant has failed or refused to perform a duty owed to plaintiffs, and that no facts are alleged to justify issuance of an injunction or other mandatory order.

WHEREFORE, Intervenors pray that plaintiffs take nothing by reason of their complaint; that the Inter-

venors recover their taxable costs against plaintiffs herein and that the Court grant intervenors such other and further relief as to the Court may seem just and proper.

Respectfully submitted,

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PEYTON G. BOWMAN, III
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(202) 638-3752
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Company, and
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Company

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321 North Harvey
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73101
(405) 232-3366
Attorney for
Oklahoma Gas and Electric
Company

By /s/ Peyton G. Bowman, III
PEYTON G. BOWMAN, III

September 17, 1973

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1182-73

SIERRA CLUB, ET AL.

v.

ROGERS C. B. MORTON, ET AL.

ANSWER OF WESTMORELAND
RESOURCES, INTERVENING DEFENDANT

First Defense

1. Intervenor is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 1 of the Complaint.

2. Denied.

3-10. Intervenor is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraphs 3-10 of the Complaint.

11-19. The names of the Defendants and their positions with the government are admitted. Their authority and responsibilities as stated in the Complaint constitute conclusions of law which require no answer.

20-26. Intervenor is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraphs 20-26 of the Complaint.

27-34. Denied.

35-36. Intervenor is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraphs 35-36 of the Complaint.

37. Denied.

38-40. The allegations contained in paragraph 38-40 of the Complaint constitute conclusions of law which require no answer.

Second Defense

So far as the Complaint relates to a proposed mining operation of this Intervenor, the case involves a wholly

localized coal mining operation, unrelated to any other mining operation within the four-state area. The coal to be mined has been leased by the Crow Tribe of Indians to Intervenor under a lease which has been approved by the Department of the Interior. The Bureau of Indian Affairs is in the course of completing an environmental impact statement on the basis of which the Secretary of the Interior may consider approval of Intervenor's coal mining plan. No other environmental statement or study is required by the National Environmental Protection Act prior to the approval of the mining plan by the Secretary since preparation of such a statement by the Bureau of Indian Affairs fully complies with the requirements of the Act. Therefore, the Complaint fails to state a claim upon which relief can be granted.

Third Defense

None of the reasons set forth in the Complaint as justification for the granting of equitable relief to the Plaintiffs, are applicable to the Intervenor's coal mining operation, and no basis is alleged in the Complaint for the granting of an injunction or other equitable relief against Intervenor for its mining operation. Plaintiffs will not suffer irreparable injury as a result of the proposed mining operation which will be entirely localized and will have a relatively small impact upon the environment. On the other hand, an injunction that would restrain the mining operation would have an adverse effect upon the nation's supply of coal and would cause Intervenor to suffer a substantial monetary loss.

Fourth Defense

Mining plans on Indian lands are not subject to the environmental policy of the National Environmental Policy Act, and consequently Plaintiffs fail to state a claim upon which relief can be granted in so far as they seek equitable relief in connection with Intervenor's Indian land mining operation.

Fifth Defense

Plaintiffs have failed to state a case that is ripe for judicial review.

Sixth Defense

With respect to any controversy which Plaintiffs have with Intervenor, Plaintiffs have no standing to maintain this suit.

Respectfully submitted,

/s/ Theodore Voorhees
THEODORE VOORHEES
Attorney for Westmoreland
Resources, Intervening
Defendant
Dechert Price & Rhoads
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(202) 872-8600

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1182-73

SIERRA CLUB, ET AL., PLAINTIFFS

vs

ROGERS C. B. MORTON, ET AL., DEFENDANTS

ANSWER

Intervenor, Kerr-McGee Corporation, by its attorneys,
answers the complaint as follows:

First Defense

The complaint fails to state a claim upon which
relief can be granted.

Second Defense

The suit is premature with respect to alleged statu-
tory or regulatory violations and does not, therefore,
present a justiciable case or controversy as required by
the United States Constitution.

Third Defense

I

Intervenor admits that federal agencies will be called
upon to approve mine plans for its federal coal leases
in Wyoming and to grant rights of way in support of
these leases. Intervenor is without information to form
a belief as to the truth of the other allegations in para-
graph 1, except intervenor denies that defendants' pro-
posed actions with regard to intervenor's federal coal
leases in Wyoming violate the National Environmental
Policy Act.

II

Intervenor denies the allegations of paragraph 2 that
this court has jurisdiction over this action.

III

Intervenor is without information sufficient to form
a belief as to the truth of the allegations of paragraphs
3, 4, 5, 6, 7, 8, and 9 of the complaint.

IV

Intervenor is without information sufficient to form
a belief to the truth of the allegations in paragraph
10 except intervenor denies that operations on its federal
coal leases in Wyoming threaten or will threaten the
citizens and members of plaintiff's organizations with
destruction of their lands, water pollution, air pollution,
diversion of water, harm to fish, wildlife, crops or vege-
tation, loss of recreational opportunities, esthetic damage,
vastly increased population, or at all.

V

Intervenor admits the allegations of paragraphs 11,
12, 13, 14, 15, 16, 17, 18 and 19 of the complaint.

VI

Intervenor is without sufficient information to form
a belief as to the truth of the allegations contained in
paragraphs 20, 21, 22, 23 and 24 except intervenor ad-
mits that its federal coal leases in Wyoming contain
reserves sufficient to justify their development and that
intervenor will require rights of way for railroads, roads,
power lines, water wells and utilities to service its leases
and intervenor denies that its mine plans and operations
on its federal coal leases, which cover only a very small
area in the state of Wyoming, comprehend mine mouth,
coal burning electric power plants, or that its mine plans
and operations involve a network of ultra high voltage
power lines, water for its operations from sources other
than the lands comprehended by its leases, or that they re-
quire slurry pipelines or dramatic urban changes.

VII

Intervenor is without information sufficient to form a belief as to the truth of the allegations in paragraph 25 except that intervenor denies that all the various aspects for the proposals for exploiting the area's coal reserves are closely interrelated.

VIII

Intervenor is without information sufficient to form a belief as to the truth of the allegations contained in paragraph 26, except intervenor admits that it is the lessee under five federal coal leases covering a very small area in Wyoming and that it is preparing mine plans for several of its leases and information for submission to USGS to assist in the preparation of NEPA impact statements in connection with its mine plans, that it will supply coal from its federal leases to public utilities providing electricity to residents of Arkansas, Louisiana and Texas, that the Burlington-Northern has applied to the Interstate Commerce Commission for a railroad from Douglas to Gillette, Wyoming, and that intervenor has obtained an option contract for water from the Bighorn Lake which is in no way included in Kerr-McGee's present plan to develop its federal coal leases in Wyoming.

IX

Intervenor is without information sufficient to form a belief as to the truth of the allegations in paragraph 27 except intervenor denies that its operations on its leases will cause or significantly contribute to the pollution, destruction, spoilage, and massive regional changes alleged in paragraph 27.

X

Intervenor is without sufficient information to form a belief as to the truth of the allegations in paragraph 28 except intervenor admits that if alternatives exist relating to the exploitation and development of the coal resources on its federal coal leases in Wyoming such alternatives can be considered in NEPA statements pre-

pared by the USGS in connection with the approval by the USGS of mine plans for intervenor's federal coal leases in Wyoming.

XI

Intervenor is without sufficient information to form a belief as to the truth of the allegations in paragraph 29 except intervenor denies that the study alleged is necessary for the protection of the environment surrounding the lands comprehended by intervenor's federal coal leases in Wyoming.

XII

Intervenor is without information sufficient to form a belief as to the truth of the allegations in paragraph 30 except intervenor denies that serious environmental questions will remain in connection with operation on intervenor's federal coal leases in Wyoming after submission by it to the USGS of its mine plans, rights of way applications, and information to assist the USGS in preparation of NEPA statements in connection with said plans.

XIII

Intervenor is without information sufficient to form a belief as to the truth of the allegations contained in paragraphs 31, 32, 33, 34, 35 and 36.

XIV

Intervenor denies the truth of the allegations of paragraphs 37, 38, 39 and 40 except intervenor admits the truth of the allegations contained in the first sentence of paragraph 38 and denies that NEPA requires preparation of a comprehensive environmental impact statement for actions by defendants named in the Complaint in connection with coal development in the Northern Great Plains Region as a condition precedent to the approval by the USGS of mine plans for operations on and applications for rights of way to service intervenor's federal coal leases in Wyoming.

XV

Intervenor denies each and every allegation of the Complaint not hereinbefore specifically admitted.

WHEREFORE, intervenor respectfully prays that the Complaint be dismissed.

Respectfully submitted,

/s/ Peter J. Nickles
PETER J. NICKLES
Covington & Burling
888 Sixteenth Street N.W.
Washington, D.C. 20006

/s/ Thomas R. Cochran
THOMAS R. COCHRAN
Kerr-McGee Corporation
Kerr-McGee Center
Oklahoma City, Oklahoma
73102

September 24, 1973

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1182-73

SIERRA CLUB, ET AL., PLAINTIFFS

v8

ROGERS C. B. MORTON, ET AL., DEFENDANTS

ANSWER OF INTERVENOR
AMERICAN ELECTRIC POWER SYSTEM

For its answer, intervenor American Electric Power System admits, denies and alleges as follows:

I

Admits that extensive coal reserves exist in north-eastern Wyoming, eastern Montana, western North Dakota and western South Dakota, that commercial development of some such reserves is expected within the next few years, and that federal agencies may have made many decisions concerning the development of such reserves; denies that there have been any unlawful omissions in the preparation of environmental impact statements or interdisciplinary studies; lacks sufficient information and knowledge to form a belief as to the remaining allegations of Paragraph 1.

II

Denies that this Court has jurisdiction over this action. The allegation of the complaint do not allege a justiciable controversy because plaintiffs seek an advisory judgment only. Jurisdiction does not exist under the Administrative Procedure Act, 5 U.S.C. §§ 701-706, because plaintiffs do not seek court review of agency action. The complaint does not state a claim for an injunction or mandamus.

III

Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 3, 4, 5, 5, 6, 7 and 9.

IV

Lacks knowledge or information sufficient to form a belief as to whether plaintiffs are authorized to sue on behalf of their members as well as themselves, whether they have many members who are residents and land owners in the Northern Great Plains region, or whether any such members are employed as ranchers or farmers or in recreational industries; admits that plaintiff organizations have members who may visit the Northern Great Plains region, and denies all other allegations contained in Paragraph 10.

V

Admits the allegations set forth in Paragraphs 11, 12, 13, 14, 15, 16, 17, 18 and 19.

VI

Admits that the area described in the complaint as the Northern Great Plains region contains vast reserves of coal with relatively low sulfur content, and that substantial interest exists in the development of such deposits; lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations of Paragraphs 20 and 21.

VII

Admits that the Department of Interior has prepared reports entitled "North Central Power Study" and "Appraisal Report on Montana-Wyoming Aqueducts" which set forth the projections and analyses described in Paragraphs 22 and 23; lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraphs 22 and 23.

VIII

Lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 24.

IX

Admits that coal can be converted into electricity, gas, liquid fuel or petrochemicals at mine-mouth facilities and that appropriate transportation facilities would be needed for the transportation of these products to distant markets, or, alternatively, that the coal might be shipped directly to other locations for conversion near such markets, denies that any of the proposals as may exist for commercial development of the coal reserves in the Northern Great Plains region are interrelated; lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 25.

X

Lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 26.

XI

Denies the truth of the allegations of Paragraph 27.

XII

Admits that numerous possible alternatives exist relating to the commercial development of the coal reserves of the Northern Great Plains region, as alleged in Paragraphs 28 and 29, one of which is the transportation of coal for conversion and use outside the region after it is mined; admits the allegations of Paragraph 29 that a careful and comprehensive study of alternatives for commercial development of the coal reserves throughout the Northern Great Plains region could consider numerous issues; denies that any such study is needed to provide protection for the environment or is required by law.

XIII

Denies the truth of the allegations of Paragraph 30.

XIV

Admits that the federal agency defendants have authority over certain lands, minerals and activities relating to the coal reserves in the Northern Great Plains region, and that any decisions which they have made or will be making within their authority will be important to the commercial development of such coal reserves; lacks sufficient information and knowledge to form a belief as to the remaining allegations in Paragraphs 31 and 32.

XV

Admits that the studies identified in Paragraph 33 have been completed or are underway; denies that the United States has treated the coal development of the Northern Great Plains region as requiring comprehensive planning.

XVI

Lacks sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraphs 34, 35 and 36.

XVII

Denies the truth of the allegations in Paragraph 37.

XVIII

Admits that the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 *et seq.*, requires that Federal agencies prepare an environmental impact statement before taking any "major Federal action significantly affecting the quality of the human environment"; denies the truth of the remaining allegations of Paragraph 38.

XIX

Denies the truth of the allegations in Paragraph 39.

XX

Admits that the plaintiffs have correctly quoted from the National Environmental Policy Act of 1969 in Para-

graph 40; denies the truth of the remaining allegations in Paragraph 40.

FIRST AFFIRMATIVE DEFENSE

Intervenor alleges that the complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Intervenor alleges that the complaint does not present a case of actual controversy, but rather seeks an advisory judgment, and no justiciable issues are presented.

THIRD AFFIRMATIVE DEFENSE

Intervenor alleges that the complaint does not allege that wrongful agency action has been taken, or is threatened, and the Court does not have jurisdiction under the Administrative Procedure Act, 5 U.S.C.A. §§ 701 *et seq.*

FOURTH AFFIRMATIVE DEFENSE

Intervenor alleges that the complaint does not state that any defendant has failed or refused to perform a duty owed to plaintiffs, and that no facts are alleged to justify issuance of an injunction or other mandatory order.

WHEREFORE, Intervenor prays that plaintiffs take nothing by reason of their complaint; that the Intervenor recover its taxable costs against plaintiffs herein and that the Court grant intervenor such other further relief as to the Court may seem just and proper.

Respectfully submitted,

/s/ Peter J. Nickles
 PETER J. NICKLES
 Covington & Burling
 888 Sixteenth Street, N.W.
 Washington, D.C. 20006
 (202) 293-3300

/s/ James B. Henry
 JAMES B. HENRY
 American Electric Power
 System
 Two Broadway
 New York, New York 10004

October 2, 1973

UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1182-73

SIERRA CLUB, ET AL., PLAINTIFFS

vs

ROGERS C. B. MORTON, ET AL., DEFENDANTS

ANSWER OF WISCONSIN POWER AND
 LIGHT COMPANY

For its answer, intervenor Wisconsin Power and Light Company alleges:

1. Denies that it has knowledge or information sufficient to form a belief as to whether there is to be a massive development of northeastern Wyoming, eastern Montana, western North Dakota and western South Dakota or as to whether this case arises out of any alleged development of said areas; admits that extensive coal reserves exist in said areas and that commercial development of some of said reserves is expected within the next few years; denies that it has knowledge or information sufficient to form a belief as to the nature of such development or any commercial, industrial or urban development incidental thereto; admits that Federal agencies may have made and may in the future make decisions concerning the development of such reserves; upon information and belief, denies that, incident to such development, there has been omitted any environmental impact statement or interdisciplinary study required by law; denies that any proposed actions on the part of defendants will be in violation of the National Environmental Policy Act.

2. Denies that the Court has jurisdiction over this action under the Administrative Procedure Act, 5 U.S.C. 701-706, in that no judicial review of any agency action is sought; denies that the Court has jurisdiction under 28 U.S.C. 1331(a) in that the Complaint does not allege

the existence of any controversy, the action seeking an advisory judgment only; denies that the Court has jurisdiction under 28 U.S.C. 1361 in that the Complaint does not state a claim for injunction or mandamus.

3. Denies that it has knowledge or information sufficient to form a belief as to the allegations in paragraphs 3 through 9 of the Complaint.

4. Denies that it has knowledge or information sufficient to form a belief as to whether plaintiffs are authorized to sue in behalf of their members, as to whether they are authorized to sue in behalf of themselves, as to whether they have members who are residents and landowners in the Northern Great Plains region, as to whether any such members are ranchers and farmers, or operate or are employed in recreational industries; denies that any such ranchers and farmers are threatened by the destruction of their land by any cause; denies that those who operate or are employed in recreational industries are threatened by the loss of any lands, by any harm, destruction, pollution of lands, the air or any waters; denies that there is any threat of being forced to breathe polluted air, any loss of recreational opportunities, any aesthetic damage.

5. Admits the allegations contained in paragraphs 11 through 19 of the Complaint.

6. Admits that the area described as the Northern Great Plains region contains vast reserves of low sulfur content coal; admits that substantial interest exists in the development of such coal deposits; denies that it has knowledge or information sufficient to form a belief as to the truth as to the remaining allegations of paragraphs 20 and 21 of the Complaint.

7. Admits that a North Central Power Study and an Appraisal Report on Montana-Wyoming Aqueducts have been prepared; denies that it has knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraphs 22 and 23 of the Complaint.

8. Denies that it has knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24 of the Complaint.

9. Upon information and belief, denies that the various aspects of the plans to develop the area's coal reserves are closely interrelated; admits that coal can be converted into electricity and other fuels and that transportation facilities would be needed for the transportation of such electricity and other fuels to distant markets or that coal might be shipped to other locations for conversion near such markets; denies that it has knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 25 of the Complaint.

10. As to the allegations of paragraphs 26 (a) and (b), intervenor Wisconsin Power and Light Company alleges that it has a contract with Western Energy Company, a wholly owned subsidiary of Montana Power Company, for the purchase of coal in Rosebud County, Montana; alleges, upon information and belief, that Western Energy Company holds, and since 1959 has held leases for the mining of coal owned by the United States as well as leased from other owners and has operated a mine at Colstrip, Montana, since 1923; denies that it has knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 26 of the Complaint.

11. Upon information and belief, denies the allegations of paragraph 27 of the Complaint.

12. Admits that there are possible alternatives as to the commercial development of the coal reserves in said areas; admits that a study of such alternatives could consider numerous issues; upon information and belief, denies that any such study is required by law or to protect the environment.

13. Upon information and belief, denies the allegations in paragraph 30 of the Complaint.

14. Admits that the Federal agency defendants have authority over certain lands, minerals and activities relating to the coal reserves in the Northern Great Plains region and that said defendants' decisions in cases coming before it relative to the development of such coal reserves will be important; denies that it has knowledge or information sufficient to form a belief as to the truth

of the remaining allegations in paragraphs 31 and 32 of the Complaint.

15. Admit that the studies referred to in paragraph 33 of the Complaint have been completed or are in process; upon information and belief, denies that the United States has treated the coal development of the Northern Great Plains region as requiring comprehensive planning.

16. Denies that it has knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 34, 35 and 36 of the Complaint.

17. Upon information and belief, denies the allegations in paragraph 37 of the Complaint.

18. Admits that the National Environmental Policy Act requires that Federal agencies prepare an environmental impact statement before taking certain actions; denies that it has knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 38 of the Complaint.

19. Upon information and belief, denies the allegations in paragraph 39 of the Complaint.

20. Admits that the National Environmental Policy Act requires federal agencies to utilize interdisciplinary approaches and to develop and describe certain recommended courses of action; upon information and belief, denies that any action or courses of action taken or not taken by defendants incident to the development of said coal reserves violates the National Environmental Policy Act.

21. Intervenor Wisconsin Power and Light Company further answering and by way of an affirmative defense alleges that the Complaint fails to state a claim upon which relief can be granted.

22. Intervenor Wisconsin Power and Light Company further answering and by way of a second affirmative defense alleges that the Complaint fails to state a cause of actual controversy, presents no justiciable issues but merely seeks an advisory judgment.

23. Intervenor Wisconsin Power and Light Company further answering and by way of a third affirmative defense alleges that the Complaint fails to state that any wrongful agency action has been taken or threatened or

that any agency action taken is sought to be reviewed and, therefore, the Court has no jurisdiction under the Administrative Procedure Act, 5 U.S.C.A. Section 701, *et seq.*

24. Intervenor Wisconsin Power and Light Company further answering and by way of a fourth affirmative defense alleges that the Complaint fails to state that any defendant has failed or refused to perform a duty owed to plaintiffs and fails to state any facts upon which any injunction or other mandatory order can issue.

WHEREFORE, Intervenor demands judgment dismissing plaintiffs' Complaint together with its costs and disbursements herein.

/s/ Eugene O. Gehl
EUGENE O. GEHL
Attorney for Wisconsin
Power and Light
Company
Post Office Box 1767
122 West Washington
Avenue
Madison, Wisconsin
53701

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1182-73

SIERRA CLUB, ET AL., PLAINTIFFS

v.

ROGERS C. B. MORTON, ET AL., DEFENDANTS

ANSWER OF NORTHERN
NATURAL GAS COMPANY

For its answer, Northern Natural Gas Company admits, denies, and alleges as follows:

I.

Admits that vast coal reserves may exist in the states of Montana, Wyoming, North Dakota, and South Dakota and that federal agencies may have made certain decisions concerning the development of these resources; denies all remaining allegations in Paragraph I.

II.

Denies that this Court has jurisdiction over this action. The allegations of the complaint do not allege a justiciable case or controversy as plaintiffs seek an advisory judgment. Jurisdiction does not exist under the Administrative Procedure Act, 5 U.S.C. §§ 701-706, because plaintiffs are not seeking to review agency action. The complaint does not state a claim for an injunction or mandamus.

III.

Is without sufficient knowledge or information to form a belief regarding the truth of the allegations of Paragraphs 3 through 9.

IV.

Admits that plaintiffs sue on behalf of their members as well as themselves; is without sufficient knowledge or information at this time to form a belief regarding the allegation that many of plaintiffs' members are citizens, residents and landowners in the Northern Great Plains Region; denies all other allegations contained in Paragraph 10.

V.

Is without sufficient knowledge or information to form a belief regarding the truth of the allegations contained in Paragraphs 11 through 19.

VI.

Admits that the Northern Great Plains Region may contain vast coal reserves and that interest may exist in developing this coal. Is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraphs 20 through 23.

VII.

Admits that plans and proposals may exist for coal gasification plants and that coal gasification plants require water. Is without sufficient knowledge or information at this time to form a belief as to truth of the remaining allegations in Paragraph 24.

VIII.

Admits that coal can be converted to gas and that use of gas in markets distant from the Northern Great Plains Region may require pipelines. Denies that all the various aspects of the proposals alleged in the complaint are closely interrelated. Is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 25.

IX.

Admits that Northern and Cities Service Gas Company announced plans for four coal gasification plants in nor-

thern Wyoming and southeastern Montana and for a 700-mile gas pipeline (Paragraph 26(c)). Admits that some coal leases and permits for coal exploration, mining, and development may have been issued by landowners within the Northern Great Plains Region (Paragraph 26(a)). Is without sufficient knowledge or information at this time to form a belief as to the truth of the remaining allegations of Paragraph 26.

X.

Denies the allegations of Paragraph 27.

XI.

Admits that alternatives may exist in the development of the coal resources in the region and is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 28.

XII.

Admits that a careful and comprehensive study of alternatives for commercial development of the coal reserves in this region could consider numerous issues; denies the truth of the remaining allegations contained in Paragraph 29.

XIII.

Admits that development of the area's coal reserves may raise environmental questions; denies the truth of the remaining allegations in Paragraph 30.

XIV.

Admits that certain defendants may have authority over certain lands, minerals and activities in the Northern Great Plains Region and that the decision these defendants make in the future respecting this area may be important. Is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraphs 31 and 32.

XV.

Admits that the studies referred to in Paragraph 33 may be underway or have been made. Is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraphs 33, 34, 35 and 36.

XVI.

Admits that the National Environmental Policy Act of 1969, 42 U.S.C. § 4321, et seq., requires federal agencies to prepare environmental impact statements before taking certain actions and to utilize interdisciplinary approaches and describe appropriate alternatives. Denies the truth of the remaining allegations in Paragraphs 37 through 40.

XVII.

Denies each and every allegation of the complaint not hereinbefore specifically admitted.

XVIII.

FIRST AFFIRMATIVE DEFENSE

The complaint fails to state a claim upon which relief can be granted.

XIX.

SECOND AFFIRMATIVE DEFENSE

The complaint does not present a case of actual controversy, but rather seeks an advisory judgment, and no justiciable issues are present.

XX.

THIRD AFFIRMATIVE DEFENSE

The complaint does not allege that any wrongful agency action has been taken, or is threatened, and the Court does not have jurisdiction under the Administrative Procedure Act, 5 U.S.C. § 701-706.

XXI.

FOURTH AFFIRMATIVE DEFENSE

The complaint does not state that any defendant has failed or refused to perform a duty owed to plaintiffs, and no facts are alleged to justify the issuance of an injunction or other mandatory order.

Respectfully submitted,

F. Vinson Roach, General Counsel
D. W. Wallace, Assistant General Counsel
D. B. O'Brien, Jr., General Attorney
2223 Dodge Street
Omaha, Nebraska 68102

Justin R. Wolf, Attorney
Charles A. Case, Jr., Attorney
David B. Ward, Attorney
Wolf & Case
1625 K Street, N.W.
Washington, D.C. 20006

By /s/ Charles A. Case, Jr.
CHARLES A. CASE, JR.

Attorney for Northern Natural
Gas Company

Dated: October 3, 1973

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1182-73

SIERRA CLUB, ET AL., PLAINTIFFS

vs

ROGERS C. B. MORTON, ET AL., DEFENDANTS

ANSWER OF INTERVENER NEBRASKA
PUBLIC POWER DISTRICT, A
NEBRASKA CORPORATION

For answer, the intervener-defendant Nebraska Public Power District admits, denies and alleges as follows:

1. Admits that extensive coal reserves exist in the four-state region of northeastern Wyoming, eastern Montana, western North Dakota, and western South Dakota, that certain development of such reserves has begun or may begin in the future, and that prior to the adoption in 1969 of 42 U.S. Code Section 4321, et seq. some mining leases were approved. Intervener denies all remaining allegations of paragraph 1.

2. Denies that this Court has jurisdiction over the matters set forth in the complaint. There is no jurisdiction under the Administrative Procedure Act, as this action does not seek review of an agency action nor do the plaintiffs have standing under the Administrative Procedure Act. The intervener further denies that this action seeks mandamus, and therefore there is no jurisdiction under 28 U.S. Code, Section 1361. Intervenor further denies that the amount in controversy as to any individual plaintiff exceeds \$10,000.

3. Intervener has no knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 3 through 9, and therefore denies.

4. Denies that the plaintiffs sue on behalf of their members, but admits that many of the members of the named plaintiffs are citizens, residents and landowners

in the northern great plains region. All other allegations contained in paragraph 10 are denied.

5. Admits the allegations in paragraphs 11 through 19.

6. Admits paragraph 20 except that the intervenor denies that most of the present population derives its livelihood from "ranching on the range lands and farming in the river valleys."

7. Admits that the four-state region named in the complaint contains coal reserves, that certain of the coal reserves are of low-sulphur content and that interest exists in developing the coal reserves. The intervenor has no knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 21, and therefore denies.

8. Admits that north central power studies have been prepared, but is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 22 and therefore denies.

9. Is without knowledge or sufficient information to form a belief as to the truth of the allegations of paragraph 23, and therefore denies.

10. Is without knowledge or information sufficient to form a belief as to the truth of the allegation of paragraph 24, and therefore denies.

11. Denies that the various aspects of proposals for use of coal reserves are closely interrelated. Intervener admits that coal can be converted to electricity and other fuels, and that use of electricity in markets distant from its generation requires transmission lines. Intervener is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations in paragraph 25, and therefore denies.

12. Intervenor is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26 (a) through (j) and therefore denies.

13. Denies paragraph 27 (a) through (g).

14. Admits that alternatives to the development of the coal reserves named in the complaint may exist and the development could be accomplished in a variety of

ways, but denies that all methods mentioned in paragraph 28 offer a reasonable alternative.

15. Admits that a careful and comprehensive study as outlined in paragraph 29 could consider the issues listed in subparts (a) through (h).

16. Admits the development of the area's coal reserves raise environmental questions. Intervener denies that such questions have not been thoroughly studied. Intervener is without knowledge or information sufficient to form a belief as to the truth of the allegation in paragraph 31 and therefore denies.

17. Admits that important decisions will be made by the defendants in the future. Intervener is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in paragraph 32 and therefore denies.

18. Admits paragraph 33.

19. Is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34 and therefore denies.

20. Admits paragraph 35.

21. Is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 36 and therefore denies.

22. Denies paragraph 37.

23. Admits the first sentence of paragraph 38. Intervener denies the remainder of paragraph 38.

24. Denies paragraph 39.

25. Admits the first two sentences of paragraph 40 but denies the remainder of paragraph 40.

26. Denies that the plaintiffs are entitled to the relief requested.

NEBRASKA PUBLIC POWER

DISTRICT,

A Political Subdivision of the
State of Nebraska,

By: CROSBY, PANSING & GUENZEL
400 Lincoln Benefit Building
Lincoln, Nebraska 68508
BARLOW, WATSON & JOHNSON
Box 81686
1201 J Street
Lincoln, Nebraska 68508
Its Attorneys

By: _____
One of Said Attorneys

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1182-73

SIERRA CLUB, *et al.*, PLAINTIFFS

v.

ROGERS C. B. MORTON, *et al.*, DEFENDANTS

ANSWER OF PANHANDLE EASTERN
PIPELINE COMPANY

Intervenor Panhandle Eastern Pipeline Company for its answer to plaintiffs' complaint in the above-captioned action, admits, denies and alleges as follows:

FIRST DEFENSE

1. Intervenor admits that there are extensive coal reserves in the areas described in paragraph 1 of the complaint; that federal agencies have permitted prospecting and leasing of the coal reserves; and that a regional environmental impact statement has not been prepared. Intervenor denies that there has been any violation of the National Environmental Policy Act in connection with any of the federal actions admitted above.

2. Intervenor denies the allegations in paragraph 2 of the complaint.

3. Intervenor lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 3, 4, 5, 6, 7, 8 and 9 of the complaint.

4. Intervenor lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 of the complaint but denies that intervenor's planned coal gasification project in northeastern Wyoming in any way threatens the members of plaintiffs organizations.

5. Intervenor admits the allegations in paragraphs 11, 12, 13, 14, 15, 16, 17, 18 and 19.

6. Intervenor admits the allegations in the first, second, third and fourth sentences of paragraph 20. Intervenor lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the remaining sentences of paragraph 20, but alleges that the description of the four-state area does not adequately or accurately describe the area in northeastern Wyoming wherein Intervenor's coal gasification project will be located.

7. Intervenor admits that the four-state area described by plaintiff contains vast coal reserves, but lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 21.

8. Intervenor lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 22 and 23 of the complaint.

9. Intervenor admits that it is proceeding with its plans for a coal gasification plant; denies that either the plant or the related coal mining operation will have any effect on the water resources or population growth of any area other than a very small area in northeastern Wyoming; and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 24 of the complaint.

10. Intervenor lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25, except that intervenor denies that the various aspects of the proposals for exploiting the area's coal reserves are closely interrelated.

11. Intervenor lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26, except that intervenor admits that it has a substantial investment in its planned coal gasification plant and related mining operations.

12. Intervenor lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27, except that intervenor denies that any of its activities will have the regional environmental consequences described by plaintiffs for the reason that such activities will be localized in one small area of Wyoming and will in all respects comply with applicable, federal and state environmental standards.

13. Intervenor lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28 except intervenor admits that to the extent that various alternatives exist in connection with the development and utilization of intervenor's coal resources, such alternatives can be fully considered through a separate environmental impact statement covering intervenor's coal gasification project.

14. Intervenor lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 29, except that intervenor denies that the National Environmental Policy Act will be violated unless all development of the coal resources within the four-state area is halted.

15. Intervenor lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 30 except that intervenor denies that the National Environmental Policy Act will be violated if the defendants should grant authorizations in connection with intervenor's coal gasification project without first preparing a regional environmental impact statement.

16. Intervenor lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraphs 31, 32, 33, 34, 35 and 36 of the complaint.

17. Intervenor denies the truth of the allegations in paragraphs 37, 38, 39 and 40 except that intervenor admits the first sentence of paragraph 38 of the complaint. Intervenor further alleges that there does not now exist a federally-approved plan for the development of the four-state area described by plaintiff in paragraph 1 of the complaint and that therefore, no comprehensive environmental impact statement is required by the National Environmental Policy Act.

18. Intervenor further denies each and every allegation of the complaint not hereinbefore specifically admitted.

SECOND DEFENSE

The complaint fails to state a claim upon which relief can be granted.

THIRD DEFENSE

The complaint fails to state a justiciable case or controversy. Plaintiffs prematurely ask for relief since they fail to allege that any major federal action has been taken which significantly affects the quality of the human environment within the meaning of the National Environmental Policy Act. Plaintiffs seek only an advisory opinion.

WHEREFORE, intervenor respectfully prays that the complaint be dismissed.

Respectfully submitted,

/s/ Robert L. Ackerly
 ROBERT L. ACKERLY
 Sellers, Conner & Cuneo
 1625 K Street, N.W.
 Washington, D.C. 20006

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1182-73

SIERRA CLUB, ET AL., PLAINTIFFS

v.

MORTON, ET AL., DEFENDANTS

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Plaintiffs hereby move under Rule 56 of the Federal Rules of Civil Procedure for summary judgment on the grounds that the National Environmental Policy Act, 42 U.S.C. 4231, *et seq.* requires:

(1) the preparation and consideration of a comprehensive environmental-impact statement concerning coal development in the Northern Great Plains region before issuing coal prospecting permits or mining leases, entering into options or contracts for the sale of water or taking any other actions concerning coal development in the Northern Great Plains Region because the federal activities and plans relating to the development are closely interrelated and constitute a "major federal action significantly affecting the quality of the human environment" (42 U.S.C. 4332(2)(C)); and

(2) the carrying out of systematic interdisciplinary studies of the coal development in the Northern Great Plains region and the study of appropriate alternatives to this development.

Since defendants have not prepared and considered such a comprehensive environmental-impact statement or made such studies before issuing coal prospecting permits and mining leases, entering into options and contracts for the sale of water, and taking other actions concerning coal development in the Northern Great Plains region, they have violated the Act.

We do not believe that there is any genuine issue of fact relating to this motion.

Respectfully submitted,

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August 31, 1973

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1882-73

SIERRA CLUB, ET AL., PLAINTIFFS

v.

ROGERS C. B. MORTON, ET AL., DEFENDANTS

PEABODY COAL COMPANY, ET AL.,
INTERVENOR-DEFENDANTS

INTERVENOR-DEFENDANT'S MOTION
FOR JUDGMENT ON THE PLEADINGS

Intervenor-Defendants, by their attorneys, move the Court to enter judgment on the pleadings in favor of Defendants and Intervenor-Defendants on each of the following grounds, all as more fully set forth in the Memorandum of Points and Authorities filed herewith:

1. Neither the First Claim nor the Second Claim of the Complaint states a claim upon which relief can be granted.
2. The Complaint does not present a case or actual controversy, but rather seeks an advisory judgment.
3. The Complaint alleges that the Court has jurisdiction under the Administrative Procedure Act, 5 U.S.C. Section 701, *et seq.*, but does not allege that wrongful agency action has been taken or is threatened.

4. The Complaint does not allege that any Defendant has failed or refused to perform a duty owed to Plaintiffs, and the Court does not have authority to order acts committed by law to agency discretion.

Respectfully submitted,

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By: /s/ James W. McDade
JAMES W. MCDADE

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Civil Action No. 1182-73

SIERRA CLUB, ET AL., PLAINTIFFS

v.

ROGERS C. B. MORTON, ET AL., DEFENDANTS

**MOTION OF KERR-McGEE CORPORATION
FOR PARTIAL SUMMARY JUDGMENT**

The Intervenor-Defendant, Kerr-McGee Corporation ("Kerr-McGee"), respectfully moves for partial summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure insofar as plaintiffs have requested equitable relief against the federal defendants in connection with action by them on any plans or applications relating to the mining of coal on Kerr-McGee's Lease Nos. Wyoming 0312311, 0313668, 0311810, 23928 and 24710. In support of its motion, Kerr-McGee states:

1. The United States Geological Survey ("USGS") will prepare a detailed environmental impact statement covering Kerr-McGee's mining plans pursuant to the provisions of the National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. § 4321, *et seq.* This environmental impact statement will be completed prior to any action by the federal defendants on Kerr-McGee's mining plans. No other environmental impact statement is required by NEPA prior to such federal action.

2. The complaint is not directed to the coal mining operation proposed by Kerr-McGee. Kerr-McGee does not plan mine-site processing of the coal. Its planned operations are limited to the mining and shipment of coal. Thus, no process discharge of effluent into the air or water will take place. Further, Kerr-McGee's proposed operations are limited to a small area in a single state, Wyoming, and have no regional impact. Accordingly, there is no basis for the granting of any injunction or

other equitable relief against the federal defendants insofar as it would preclude them from taking action with respect to Kerr-McGee's plans and applications prior to preparation of the regional environmental impact statement proposed by the plaintiffs.

* * *

Pursuant to paragraph (e) of this Court's Memorandum To Counsel, dated October 12, 1973, Kerr-McGee has refrained from discussion in its supporting memorandum of issues, both legal and factual, common to all intervenors. Such discussion is contained in the joint brief and supporting papers to be filed on behalf of all intervenors. Further, Kerr-McGee relies on the joint statement of material facts not in issue submitted by the intervenors.

Respectfully submitted,

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October 31, 1973

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1182-73

SIERRA CLUB, ET AL., PLAINTIFFS

v.

ROGERS C. B. MORTON, ET AL., DEFENDANTS

MOTION OF ATLANTIC RICHFIELD COMPANY
FOR PARTIAL SUMMARY JUDGMENT

Intervening defendant, Atlantic Richfield Company, ("Atlantic Richfield") hereby moves for partial summary judgment under Rule 56 of the Federal Rules of Civil Procedure insofar as plaintiffs have requested equitable relief against the federal defendants in connection with action by them on any plans or applications relating to the mining of coal on Atlantic Richfield's Lease No. Wyoming 2313, Campbell County, Wyoming. In support of this motion, Atlantic Richfield states:

1. That the United States Geological Survey (USGS) will prepare, pursuant to the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4321 *et seq.*, a detailed environmental impact statement covering Atlantic Richfield's mining plans, proposed activities and necessary federal approvals. Such statement will be completed prior to any action by federal defendants on Atlantic Richfield's mining plans and proposed activities. No other environmental impact statement is required by NEPA prior to such federal action.
2. There is no basis for the granting of an injunction or other equitable relief against federal defendants insofar as it would preclude them from taking action with respect to Atlantic Richfield's plans and applications after preparation

of the environmental impact statement as proposed.

Atlantic Richfield's statement of material facts not in issue and memorandum of points and authorities in support of this motion provide further detailed support.

Respectfully submitted,

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Attorneys for Intervenor
Atlantic Richfield Company

September 27, 1973

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1182-73

SIERRA CLUB, ET AL., PLAINTIFFS

v.

ROGERS C. B. MORTON, ET AL., DEFENDANTS

MOTION OF WESTMORELAND RESOURCES,
INTERVENING DEFENDANT, FOR PARTIAL
SUMMARY JUDGMENT

Intervenor hereby moves under Rule 56 of the Federal Rules of Civil Procedure for partial summary judgment on the following grounds:

(1) On the undisputed facts, intervenor's proposed mining plan at Sarpy Creek, Montana, involves a localized operation having none of the detrimental characteristics set forth in the Complaint, and none of the reasons set forth by the Plaintiffs as justifying an order directing the preparation of an area-wide environmental impact statement, has any application to Intervenor's proposed mine.

(2) The Bureau of Indian Affairs has prepared an environmental impact statement which has been noticed in the Federal Register with respect to Intervenor's mining plan, and the requirements of NEPA have been fully met insofar as the preparation of an impact statement is concerned. Under these circumstances, NEPA does not require or permit the enjoining of Intervenor's mining plan pending the completion of the preparation of an area-wide environmental impact statement.

(3) The Complaint fails to state a claim on which relief can be granted with respect to a mining plan for coal resources privately owned by the Crow Tribe of Indians.

Intervenor does not believe that there is any genuine issue of fact relating to this motion.

Respectfully submitted,

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October 17, 1973

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1182-73

SIERRA CLUB, ET AL., PLAINTIFFS

v.

ROGERS C. B. MORTON, ET AL., DEFENDANTS

MOTION OF THE CROW TRIBE OF INDIANS,
INTERVENING DEFENDANT, FOR PARTIAL
SUMMARY JUDGMENT

The Crow Tribe of Indians, Intervening Defendant, hereby moves, under Rule 58 of the Federal Rules of Civil Procedure, for summary judgment on that part of the Plaintiffs' claim that deals with the approval of leases and mining plans involving lands or resources of the Crow Tribe of Indians. A summary judgment should be entered in favor of the Crow Tribe of Indians and against the Plaintiffs on the ground that the National Environmental Policy Act, 42 U.S.C. 4231 et seq., neither requires nor permits the preparation and filing of a comprehensive area-wide environmental impact statement prior to approval by the Federal Defendants of leases and mining plans affecting Crow Indian coal.

The Crow Tribe of Indians incorporates herein by reference the Statement of Material Facts as to Which There is No Genuine Issue which has been filed by Intervenor, Westmoreland Resources, with respect to its Motion for Summary Judgment.

The Memorandum of Points and Authorities accompanying this motion demonstrates that there is no genuine issue of any material fact relating to the portion of this litigation in which this Intervenor is interested and that this Intervenor is entitled to judgment as a matter of law.

Respectfully submitted,

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 General Counsel for the
 Crow Tribe of Indians
 Intervenor.

/s/ Stephen N. Shulman,
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IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1182-73

SIERRA CLUB, ET AL., PLAINTIFFS

v.

MORTON, ET AL., DEFENDANTS

INTERVENING DEFENDANTS' MOTION FOR
 SUMMARY JUDGMENT

The undersigned intervening defendants hereby move the Court, pursuant to Rule 56 F.R. Civ. P., to enter a summary judgment dismissing the complaint.

The grounds for this motion are that the pleadings, answers to interrogatories, and affidavits on file show that there is no genuine issue as to any material fact and that defendants are entitled to judgment as a matter of law, all as is more fully set forth in the memoranda of points and authorities filed in support of this motion.

Respectfully submitted,

[The parties of this Motion and their respective attorneys are listed on the following two pages.]

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil No. 1182-73

SIERRA CLUB, ET AL., PLAINTIFFS

v.

ROGERS C. B. MORTON, ET AL., DEFENDANTS

FEDERAL DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

The federal defendants, pursuant to Rule 56 of the Federal Rules of Civil Procedure, move for summary judgment of dismissal on the grounds that there is no genuine issue as to any material fact and the defendants are entitled to judgment as a matter of law.

This motion is based upon the accompanying memorandum of points and authorities in support and upon the:

1. Complaint;
2. Answer;
3. The federal defendants' answers and supplemental answers to plaintiffs' preliminary interrogatories;
4. A copy of a memorandum of August 8, 1973, from the Conservation Division of Geological Survey, attached as Exhibit 1;
5. The affidavit of the Secretary of the Interior and accompanying exhibits, attached hereto as Exhibit 2;
6. The order of September 24, 1973, by the United States Court of Appeals for the Eighth Circuit in *E.D.F. v. Froehlke*, No. 73-1619, of which the Court is asked to take judicial notice, and a copy of which is attached for convenience of the Court as Exhibit 3;

7. The order of July 20, 1973 by the Court of Appeals for the District of Columbia Circuit in *Scientists Institute v. AEC*, No. 73-1773, of which the Court is asked to take judicial notice and a copy of which is attached for convenience as Exhibit 4;
8. A copy of a memorandum of April 13, 1973, from the Secretary of the Interior to the Assistant Secretary for Congressional and Public Affairs, attached hereto as Exhibit 5; and
9. The exhibits attached to plaintiffs' memorandum of points and authorities.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil No. 1182-72

SIERRA CLUB, ET AL., PLAINTIFFS

v.

ROGERS C. B. MORTON, ET AL., DEFENDANTS

AFFIDAVIT OF ROGERS C. B. MORTON

City of Washington)
) ss
District of Columbia)

ROGERS C. B. MORTON, being duly sworn, deposes and says as follows:

1. I, Rogers C. B. Morton, am Secretary of the Interior. In such capacity I am the principal official of the Department of the Interior and responsible for directing and supervising all of its functions. With respect to the subject matter of this suit which relates to the development of coal in the Northern Great Plains Region, the Department has broad authority to issue coal leases and coal prospecting permits for coal on Federal lands, including lands wherein the United States has conveyed the surface interest but has reserved an interest in the coal; to approve exploration and mining plans; to enter into options and contracts for the sale and delivery of water; to issue right-of-way permits, and special use permits for transmission lines, plant sites, access roads, and other uses needed to obtain access to Federal, State, and private lands. In addition the Department has authority to approve coal leases and coal prospecting permits for Indian lands.

2. The authority of the Department with respect to the use and disposition of public lands and Indian lands and disposition of Federal water in the Northern Great Plains area confers upon the Department the ability to

review many of the company plans. The Department has and will continue to utilize this authority in a manner consistent with the requirements of the National Environmental Policy Act of 1969.

3. The Department is aware that individual companies have plans or are developing plans relating to the utilization of coal in the Northern Great Plains. The Department is not fully apprised of the existence or details of all of these plans. The plans are those of individual companies or groups of companies which are subject to change to reflect differences in air and water quality standards, land use policies, customers' demands, and developments in technology. The Department has no existing plan or program to develop or to encourage the development of the coal resources of the Northern Great Plains. The Department has attempted to develop a coordinated development plan (The North Central Power Study discussed in paragraph 4). However, the Department has taken action to control development of coal on a national basis and in the Northern Great Plains. It has initiated a study of a potential water resource project in southeastern Montana and northeastern Wyoming (The Montana-Wyoming Aqueducts Study, the status of which is discussed in paragraph 17). It has established a new national coal leasing policy (see paragraphs 5 through 10). It has halted the issuance of prospecting permits (paragraph 11). It has established a policy with respect to Indian lands (paragraph 12). It has instituted the Northern Great Plains Resource Program, hereinafter referred to as NGPRP (see paragraphs 13 through 15). These actions are not part of a plan or program to develop or encourage development but are attempts to control development by individual companies in a manner consistent with the policies and procedures of the National Environmental Policy Act of 1969.

4. On May 26, 1970, the Department of the Interior initiated the North Central Power Study. The purpose of that study was to investigate the potential for coordinated development of electric power supply in the North Central United States. The Phase I report, which

was a broad reconnaissance type study, was issued in October 1971 and utilities were given until July 1, 1972, to comment on the report. The responses received did not indicate that a plan for the coordinated development could be formulated and the study was terminated at the end of Phase I.

5. The new national coal leasing policy was announced on February 17, 1973. (The news release relating to that policy is attached hereto and marked Exhibit I.) This policy has both short-term and long-term aspects. One of the critical elements of the new national coal leasing policy is the preparation of an Environmental Impact Statement on the proposed Federal coal leasing in the United States. This statement is referred to as the coal programmatic EIS. The primary objective of the statement is to provide a national overview of the impact of the entire Federal coal leasing program on the quality of the human environment.

6. That statement will not deal with proposed developments as the Department can only speculate as to what proposals will be made by individual companies. It will serve as the foundation and framework for subsequent environmental analyses and supplemental statements which may be prepared for subregions, geological structures or basins or on an individual basis for coal management actions. Also, the coal programmatic EIS is essential to the development of a planning system to determine the size, timing and location of future coal leases in order to meet energy needs most effectively.

7. A working draft of the statement has been prepared and is currently undergoing internal review. When it is completed it will be issued in draft form for general agency and public comment. This will allow public involvement in the analysis and review of the Federal leasing policies and procedures which have an impact upon the environment. It is planned that the final coal programmatic EIS will be issued in early 1974 following consideration of comments and necessary review.

8. Prior to the issuance of the coal programmatic EIS in its final form and the development of the planning system, coal leases will not be issued except pursuant to

the short-term coal leasing policy which was announced in the news release of February 17, 1973 (Exhibit I). That policy dictates that coal leases will be issued only under the following conditions:

- a. When coal is needed now to maintain existing mining operations; or
- b. When coal is needed as a reserve for production in the near future; and
- c. When the land to be mined will in all cases be reclaimed in accordance with lease stipulations that will provide for environmental protection and land reclamation; and
- d. When an environmental impact statement covering the proposed lease has been prepared when required under the National Environmental Policy Act.

9. The short-term leasing policy will restrain leasing in the Northern Great Plains region except under the conditions set forth in paragraph 8 and will limit the Department's actions to those for which it has adequate information basis. It is intended to insure that current coal production can continue and to prevent deficiencies in supplies of coal which are necessary to meet our continuing energy needs.

10. The preparation of the coal programmatic EIS will also assist the Department in complying with the policies and procedures of the National Environmental Policy Act of 1969 with respect to actions in the Northern Great Plains prior to its issuance in final form. The information compiled and developed will expand the Department's informational basis upon which decision will be made. The coal programmatic EIS in its present form contains material relative to the Northern Great Plains. The section on the various environments where coal occurs includes an extensive part on the Northern Great Plains Province with discussions relating to geology, topography, climate, hydrology, soils, vegetation, wildlife, land use, population patterns, and human value resources in the province. In addition, the section on

impacts on the environment from coal leasing contains a part on the impacts unique to the Northern Great Plains Province. Other material analyzed and developed in the coal programmatic EIS will be valuable in decision-making relative to the Northern Great Plains, such as discussions relating to measures to mitigate environmental impacts, alternative sources of energy and conservation of energy use.

11. The issuance of coal prospecting permits by the Department of the Interior was halted by Secretarial Order No. 2952 issued February 13, 1973 (a copy of that order is attached hereto as Exhibit II). No prospecting permits will be issued until further notice. The purpose of that order was to allow for the more orderly development of coal resources upon the public lands with proper regard for the protection of the environment in a manner consistent with the National Environmental Policy Act of 1969.

12. In fulfilling its fiduciary responsibilities, the policy of the Department with respect to approval of coal leasing on Indian lands is that approval will be granted where the tribal or individual Indian land owner desires to dispose of the minerals, where the terms and conditions of the lease are in the best interest of the Indian land owner, where appropriate environmental safeguards are imposed on the lessee and where the requirements of National Environmental Policy Act have been satisfied. (See Exhibit III attached hereto).

13. The NGPRP study was initiated by the June 30, 1972 memorandum attached as Exhibit IV and was announced in the press release of October 3, 1972, which is attached as Exhibit V. The study is to provide a tool for planning at all levels of government rather than to develop an actual plan. The most recent outline of the study is attached as Exhibit VI and a chronology of significant events is attached as Exhibit VII. The study is being conducted by an interagency, Federal-State Task Force with public participation. Its analyses are to be based on assumptions of various possible levels of resource development in order to provide an informational framework for informed decision-making and planning.

The study will consist of a series of investigations and studies conducted by work groups in seven principal areas of concern: regional geology; mineral resources; water (supply and quality); air quality; surface resources; social, economic and cultural aspects; and national energy consideration. The results of these investigations will be integrated into the development of scenarios for predicting the environmental and social consequences of various possible developments.

14. The NGPRP is financed and staffed and the study is underway. The Federal funds and staff committed for fiscal 1974 total \$1,150,000 and 68 federal man years of which the Department is contributing \$700,000 and 25 man years. The work groups are in the field and public meetings were held in the Northern Great Plains area during the month of July. (See news release of July 5, 1973, attached as Exhibit VIII).

15. The work groups are to complete their preliminary reports in the spring of 1974 and an overall interim report is to be prepared by June 1974. After review of the report decisions will be made concerning the necessity of further study in specific areas.

16. The policy of the Department with respect to resource development in the Northern Great Plains Areas was announced in the memorandum of June 30, 1972 (Exhibit IV) and reasserted in the memorandum of January 24, 1973 (a copy of that memorandum with enclosures is attached as Exhibit IX). The purpose of the policy is to insure that development does not proceed based solely on single purpose studies incapable of developing comprehensive information or by piecemeal actions which restrict future options. To fulfill that purpose the granting or approval of leases, special use permits and all types of rights-of-way across public lands, the delivery and sale of water and approval of mining plans relating to coal development in the Northern Great Plains Areas will be held in abeyance pending the availability and analysis of the interim report from the NGPRP study or submitted to the Under Secretary for review and concurrence prior to execution.

17. With respect to the Montana-Wyoming Aqueducts Study the decision was made in the fall of 1972 not to seek funding for the fiscal 1974 and no funding will be sought for fiscal 1975. That study and other proposals such as the Morehead Dam will be held in abeyance pending the results of the NGPRP study.

18. After completion of the coal programmatic EIS in early 1974, decisions will be made concerning supplemental statements necessary for coal management actions. It is possible a decision will be made to prepare a statement for the entire Northern Great Plains region, but the information available may indicate that statements on smaller subregions, geologic structures, basins or selected individual actions will fulfill the policy and procedural requirements of the National Environmental Policy Act in a more satisfactory manner. Until those decisions are reached no new coal leases will be issued except pursuant to the short-term leasing policy. The interim report from the NGPRP will be available in the summer of 1974 and will provide an informational foundation for decision-making and planning. This information will be utilized in decision-making for all coal related actions in the Northern Great Plains areas and will form a useful reference source for preparing environmental analyses and statements on proposed actions or groups of actions in the Northern Great Plains area. Until the interim report is available decisions relating to coal development in the Northern Great Plains will be held in abeyance or submitted to the Under Secretary for review and concurrence.

/s/ Rogers C. B. Morton
Secretary of the Interior

Subscribed and sworn to before me this 26th day of October, 1973

/s/ illegible
Notary Public

My Commission expires April 14, 1977

EXHIBIT I

DEPARTMENT OF THE INTERIOR

news release

OFFICE OF THE SECRETARY

For Release February 17, 1973

SECRETARY MORTON ANNOUNCES
NEW COAL LEASING POLICY

A two-pronged coal leasing policy—aimed at helping to satisfy energy needs while respecting the integrity of the environment—was announced today by Secretary of the Interior Rogers C. B. Morton.

The new coal policy hinges on a series of short-term and long-term actions, which, the Secretary said, "will be made with clear recognition that there is growing need for low-sulfur coal to supply the Nation's needs for clean energy." He further stated:

"Coal is one of the most abundant energy resources. Most of the low-sulfur coal reserves of the U.S.—about 85 percent—are located on public lands in the West within the regulatory jurisdiction of the Interior Department. We must make increasing use of this resource. At the same time we must assure that development is carefully controlled to avoid environmental mistakes of the past and to keep our planning options open."

Secretary Morton said, the new coal leasing policy will operate in conformity with what he termed the Department's "overriding goals." These are three, he stated, describing them as follows:

- (1) to assure maximum environmental protection.
- (2) to provide for orderly and timely resource development, and
- (3) to assure a fair market value return for resources sold.

He also outlined steps he would take "to resolve the apparent conflict between the need to develop the resource and the need to protect the environment." The short-term application of controls would be effected as follows: Coal leases will be issued only under the following conditions:

- When coal is needed now to maintain an existing mining operation; or
- When coal is needed as a reserve for production in the near future; and
- When the land to be mined will in all cases be reclaimed in accordance with lease stipulations that will provide for environmental protection and land reclamation; and
- When an environmental impact statement covering the proposed lease has been prepared when required under the National Environmental Policy Act.

Secretary Morton further stipulated that all pending and future applications for prospecting permits would be henceforth rejected until a thorough analysis of the current supply/demand situation can be made and more comprehensive planning of resource use can be accomplished.

"This short-term leasing policy is intended to insure that current coal production can continue," the Interior head stated. "It will prevent deficiencies in supplies of coal which are necessary to meet our continuing energy needs."

Long range aspects of the Secretary's leasing policy provide for:

- Development of an environmental impact statement on the Department's entire coal leasing program, supplementing this as necessary for appropriate impact reporting on a regional basis or for individual leases.
- Development of a planning system to determine the size, timing, and location of future coal leases in order to meet energy needs most effectively.

"The long-range aspects of the new leasing policy will combine a sound approach to development with an environmental ethic that will become the core of philosophy of Interior as a Department of Natural Resources," Secretary Morton said. "Wherever regulations need to be revised to put teeth into this approach, that will be accomplished with all the speed we can muster."

EXHIBIT II

[SEAL]

UNITED STATES DEPARTMENT OF
THE INTERIOR
OFFICE OF THE SECRETARY
Washington, D.C. 20240

February 13, 1973

ORDER NO. 2952

Subject: Issuance of Prospecting Permits for Coal

In the exercise of my discretionary authority under section 2(b) of the Mineral Leasing Act, as amended (30 U.S.C. § 201(b)), I have decided not to issue prospecting permits for coal under that section until further notice and to reject pending applications for such permits in order to allow the preparation of a program for the more orderly development of coal resources upon the public lands of the United States under the Mineral Leasing Act, with proper regard for the protection of the environment.

Accordingly, no prospecting permits for coal under section 2(b) of the Mineral Leasing Act, *supra*, shall be issued until further notice. All pending applications for such permits shall be rejected, and any applications submitted in the future shall be promptly rejected.

Nothing in this memorandum shall be deemed to restrict the rights of holders of prospecting permits, issued prior to this directive, to obtain preference right coal leases under section 2(b), *supra*, or to prevent the issuance of competitive coal leases under section 2(a) of the Mineral Leasing Act, as amended (30 U.S.C. § 201(a)).

I have determined that the issuance of this order is not such a major Federal action significantly affecting the quality of the human environment as to require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. § 4332(2)(C)).

/s/ Rogers C. B. Morton
Secretary of the Interior

EXHIBIT III

[SEAL]

UNITED STATES DEPARTMENT OF
THE INTERIOR
OFFICE OF THE SECRETARY
Washington, D.C. 20240

Apr. 13, 1973

Memorandum

To: Assistant Secretary for Congressional & Public Affairs

From: Acting Secretary of the Interior (Sgn; John C. Whitaker)

Subject: Department policy regarding mineral leasing of Indian lands

During my recent testimony before the Senate Interior and Insular Affairs Committee I was requested to submit a statement of Department policy regarding mineral leasing of Indian lands. The following statement sets forth that policy.

The policy of the Department of the Interior is to approve mineral leasing on Indian lands where:

- (a) the tribal or individual Indian landowner desires to dispose of the minerals;
- (b) the terms and conditions of the lease are in the best interest of the Indian landowner; and
- (c) appropriate environmental safeguards are imposed on the lessee, including satisfaction of the requirements of NEPA.

EXHIBIT IV

[SEAL]

UNITED STATES DEPARTMENT OF
THE INTERIOR
OFFICE OF THE SECRETARY
Washington, D.C. 20240

Jun. 30, 1972

Memorandum

To : Assistant Secretary—Fish & Wildlife & Park
Assistant Secretary—Management & Budget
Assistant Secretary—Mineral Resources
Assistant Secretary—Program Policy
Assistant Secretary—Public Land Management
Assistant Secretary—Water & Power Resources

From : Secretary

Subject: North Central Resource Study

The vast reserves of coal in the Fort Union Region of Montana, North Dakota, South Dakota and Wyoming provide an excellent opportunity for this Department to demonstrate how a responsible Federal agency can manage resource development with proper regard for environmental protection. It is important that we not lose this opportunity by engaging in single-purpose studies which are incapable of developing comprehensive information or by taking piecemeal actions which restrict our future options.

On April 11, in responding to a proposal from EPA concerning these coal fields, the Under Secretary stated our intention to conduct a comprehensive resource study involving Federal, State and local interests. In light of this, I have asked Assistant Secretary Larson to be Chairman of this task force; he will call a meeting to discuss plans for the study with a view to making a start early in the new fiscal year.

In the meantime, all leasing, environmental studies, feasibility studies, water contracts, rights-of-way and other actions related to development of coal and related resources will be held in abeyance or coordinated with the Secretary's Review Committee and approved by me.

/s/ Rogers C. B. Morton

cc: Under Secretary; Solicitor; Executive Assistant to
the Secretary

EXHIBIT V

DEPARTMENT OF THE INTERIOR

news release

OFFICE OF THE SECRETARY

For Release Tuesday, October 3, 1972

INTER-AGENCY TASK FORCE CREATED TO
ASSESS IMPLICATIONS OF RESOURCE
DEVELOPMENT IN NORTHERN GREAT PLAINS

Secretary of the Interior Rogers C. B. Morton today announced the creation of an inter-agency Federal-State task force to assess the potential social, economic and environmental impacts which would result from future development of the vast coal deposits and other resources in five Northern Great Plains States—Montana, Wyoming, South Dakota, North Dakota, and Nebraska.

The project will be known as the Northern Great Plains Resource Program. It will be undertaken jointly by the Departments of the Interior and Agriculture, the Environmental Protection Agency and the Old West Regional Commission, representing both the Department of Commerce and the governors of the five States.

Other Federal agencies will be asked to help with the project and there will be ample provision for public involvement.

The area is estimated to contain about 40 percent of the Nation's coal resources, measured in trillions of tons of low-sulfur coal, of which about 35 billion tons are readily recoverable with existing technology. The coal is concentrated primarily in the Fort Union Formation in the Powder River Basin of Wyoming and Montana, and in the western part of the Williston Basin of Montana and the Dakotas. The impact on these four States and on Nebraska would be assessed by the task force.

Considerable Federal, State, local and industry activity already has been directed toward actual mining or planning for the mining of this coal and toward dealing with possible impacts, Secretary Morton explained. This

program would be an effort to coordinate on-going activities and build a policy framework which might help guide resource management decisions in the future.

"The Federal government is interested in getting as many involved groups as possible to cooperate in building a common data base regarding the area's resources, problems and potentials," the Secretary said. "Our approach then will be to jointly explore the issues and to develop a consensus on basic policies and guidelines for the region's development."

"With effective management of the resources, the Nation can have an energy fuel it so vitally needs for power production while minimizing environmental degradation," Secretary Morton said. "These major coal resources will be developed, that is inevitable, but how they are developed is of national interest. As a Nation we must learn to develop our resources without the traditional environmental losses. In charging this task force with the responsibility of detailing and publicly reviewing all aspects of the proposed development with a critical view toward the strict controls which will be mandated as this program goes forward."

Policy guidance for the study would be provided by a Program Review Board consisting of John W. Larson, Assistant Secretary of the Interior for Program Policy; John McGuire, Chief U.S. Forest Service, Department of Agriculture; Thomas E. Carroll, Assistant Administrator for Planning and Management, Environmental Protection Agency; and Robert L. McCaughey, Federal Co-Chairman, Old West Regional Commission.

Working with the Program Review Board will be representatives of the Governors of Wyoming, Montana, North Dakota, South Dakota and Nebraska. Other Federal agencies including the Atomic Energy Commission, National Science Foundation, U.S. Army Corps of Engineers, Federal Power Commission, Office of Science and Technology, Department of Commerce, Department of Transportation, Department of Housing and Urban Development, and the Council on Environmental Quality have been asked to participate.

The NGPRP is an outgrowth of public concern in the region and of prior studies of the region's resources undertaken by the Federal and State governments as well as private organizations. While these prior studies were limited in scope, the NGPRP will examine not only the coal resource and environmental factors, but other minerals such as uranium and bentonite, the oil and gas reserves, and such values as forage, forests, wildlife, water, recreation, and socio-economic factors resulting from population changes.

"Federal agencies have recognized the problem of many coordinated and partial attempts to deal with this region," Secretary Morton said. "For that reason the Federal agencies have joined in creating this task force and have enlisted the cooperation of the five governors."

The Secretary pointed out that development of the coal deposits could provide a major source of potential clean energy consistent with President Nixon's Clean Energy Message to Congress of June 4, 1971. At present the Federal government owns about 80 percent of the mineral resources of the region and has significant surface ownership. Ownership complexities involved Federal, State, railroad and private owners in total, partial, surface only, mineral only and other ownership.

While no deadline has been set for completion of the study, Secretary Morton said it is anticipated that it will take about three years and that preliminary results will be incorporated into regional planning and decision-making by the end of the first year.

[Material Deleted]

EXHIBIT VI

OUTLINE OF PLAN NORTHERN GREAT PLAINS RESOURCE PROGRAM

Introduction

The Northern Great Plains consisting of large segments of Montana, Wyoming, North Dakota, South Dakota, and Nebraska, contains vast amounts of economically obtainable, relatively low sulfur coal. Interest in the extraction and use of this coal stems primarily from the continuing rapid growth of national energy consumption, less rapidly growing domestic supplies of oil and gas, and increasing emphasis on improved urban air quality. The possibility of large scale development of the coal reserves has, at the same time, heightened regional concern for effective land use and resource planning. The inherent issues of environmental quality, mined area reclamation, competition for scarce water resources, development of other mineral resources, and potential effects on the people and economies of the Northern Great Plains States require consideration and resolution.

The local, state and Federal governments having responsibility for land use and resource planning decisions affecting the area face competing economic, social, and environmental alternatives. The Federal government makes decisions regarding leasing of coal on public and Indian lands, regulations for air and water quality, and development of water projects. Congress is considering several measures related to surface mining. The States also are concerned with resource development; many have considered or taken legislative action related to surface mining and have prepared State Implementation Plans for air quality under the Clean Air Act. Local governments promulgate zoning and land use plans, and provide for essential public services. Regional Commissions for economic development and water supplies share similar concerns and responsibilities. These activities often are not well coordinated and decisions often are made on an *ad hoc* basis.

These factors have led the five States and several Federal agencies to cooperatively initiate the Northern Great Plains Resource Program (NGPRP). This document sets forth the objectives, design outline and organization of the program.

Objectives

The primary objective of the NGPRP is to provide an analytical and informational framework for policy and planning decisions at all levels of government. The end result is intended to be a decision-making aid for local, State, and Federal interests who together must plan and manage the area's land and natural resources.

Although the principal issue concerns the development, or nondevelopment, of energy resources within the Powder River and Fort Union areas, particular emphasis is placed on coal resources. The program will provide data and a series of fully described alternative development strategies or "scenarios" to identify the economic, social and environmental consequences of various possible courses of action. Both quantifiable and nonquantifiable implications will be considered. The final report *will not recommend a preferred development plan* for the region. Rather, it will provide information on the balancing of values and net benefits of alternative strategies so as to encourage and facilitate coordinated planning at all levels.

The second objective is to encourage the organization of ad hoc institutional entities that will bring together all facets—local, State and Federal—concerned with collection and interpretation of information affecting the future development and quality of the region. This, too, would facilitate planning that would be coordinated for the entire region. The organization would draw from existing State-Federal mechanisms for socio-economic planning in the region, such as State planning groups, Title V Commission, and appropriate River Basin Commissions. Policy and decision-making authority must be retained by established agencies, organizations, and the

State and local entities. The NGPRP will contribute in every possible way to encourage this coordination.

A third objective, related to the second, is provision of a coordinating link between data collection, research, planning and operational resource management activities that exist within many different organizations. Such a link should assure rapid interchange of technology and methodology between individual programs associated with the NGPRP.

Scope and Guidance

All analyses will deal with the implications of proposed resource management actions for the five-state area. Although focus will center on the study area, and particularly Powder River and Fort Union resources, the program will adopt whatever appropriate perspective for each subject of analysis. For example, analysis of energy requirements will consider the national energy situation and its principal geographic components, as well as other demands for Great Plains coal.

Thus, in examining the alternatives of development of coal at rates comparable to historical rates as contrasted with the accelerated development, many now predict consideration will be given to the impact on the local economy, the protection and development of esthetic and cultural values of the region, and relation to the National energy situation. Likewise, in considering energy development cases, analyses of air quality, for example, will include implications of electrical generation in distant urban areas as opposed to generation in the study area, as well as the relative effects of each on local air quality. These two examples are meant to illustrate the wide range of concerns within the NGPRP.

The program will foster integrated consideration of basic natural resource use and protection, including human interests and economic and social development. It will consider the full range of economic, social, and environmental consequences of alternative plans of land and resource management in the region.

The accumulation of knowledge and analysis techniques has implications which extend beyond the study area and into other areas of the country that are confronted with similar problems. The resultant data may become a model for future studies or programs concerned with resources in other areas.

To the fullest possible extent all concerned entities will have the opportunity to participate in the design and implementation of the program. Vehicles for participation and use of study results will include public reports, direct participation in work groups when appropriate, and the periodic assembly of policy officers from involved local, State and Federal agencies, concerned individuals, and representatives of special interest groups, to discuss issues, alternatives, and possible joint regional policies.

The Program

The NGPRP will consist of a series of investigations and studies dealing with a common theme. The over-all study will be time-phased and, although a comprehensive final summary report, as well as one or more interim summary reports will be issued, study results will be reported as they are completed.

Frequent and timely reporting will provide maximum assistance to decision makers on issues which often cannot be delayed until a full, final report is issued.

The program has four principal sections: (1) program design, (2) region profiles and constraints, (3) alternate strategies and analyses of their consequences, and (4) preparation of reports.

1. *Program Design.* The first step of the program was to obtain review of the proposed program design by other Federal agencies, States, industry and interested citizens. This has been done and this document is the product of that effort. This Program Design document which discusses the nature of the data and methodology to be used, and which elaborates on the tasks and structure of the effort.

The Program Design is intended to be an evolving document rather than a fixed statement or work plan. The Program Management Team will continually modify its concepts, and refine ideas and tasks [sic] on the basis of experience gained and suggestions from co-workers and users during the course of the program.

2. *Regional Profile & Constraints.* Data will be collected and analyzed on: (a) physical characteristics of the region, (b) resources, such as minerals and fuels, wildlife and fisheries, scenic and recreational areas, timber, agricultural products and water—including their location, current use, ownership and control, (c) present baseline environmental quality, including data on solid waste generation and disposal, (d) regional infrastructure, (e) population density, distribution, and character, (f) regional social and economic attitudes, and (g) past and present activity. In short, complete ecological, natural resource, social and economic inventories will be developed, as specified in the Program Design phase. Inventory will begin with a review of the available data, will identify gaps and then recommend collection of data to fill those gaps. As data are gathered, they will be published.

To provide a basis for judging the feasibility of development and management alternatives, it will be necessary to identify and evaluate legal, institutional, social, economic, environmental, and physical constraints on resource development and management. The analysis of physical constraint will include, for example, the need to commit or divert a resource such as water, for the development of coal. Existing arrangements may limit the extent to which this can be done.

This phase of the program will include and emphasize an inventory of institutions and attitudes. The relevant institutional constraints are readily identified—The Clean Air Act, National Environmental Protection Act, mine reclamation laws, regional water compacts, mineral leasing laws, other related State and Federal laws, land ownership, and the like. Equally important are economic and social constraints on resource management alterna-

tives. A variety of attitudes and views must be surveyed and considered.

3. *Alternative Strategic & Analyses of their Consequences.* For the purpose of an initial analysis of the consequences of development it is proposed that the Program define several alternative development strategies which will probably be in the form of trial scenarios [sic]. These trial scenarios will be based primarily on simple supply/demand analyses. They will not significantly reflect constraints such as environmental standards that are associated with the consequences of their implementation and are intended to form a framework for the analytical work to be performed in the first year of the program. As the analysis phases progress, it is expected that these constraints will become more clearly identified. As this occurs, the scenarios will be appropriately modified in the following years.

The Program will assess the environmental, social and economic impact of the set of trial scenarios, which will include a baseline and four development alternatives. Each of the development scenarios will consist of two levels or rates of resource exploitation, the higher level being the maximum possible under the relevant constraints.

The five scenarios are defined as follows:

a. *Baseline*

Rates of growth in coal exploitation seen in recent years will continue. Coal would be used for the satisfaction of regional needs, together with some export. Present State and Federal policies toward development would continue.

b. *Mine-mouth scenario*

There will be a staged development of large mine-mouth generating plants, producing electricity mainly for export outside the region via high-voltage transmission lines. The power facilities may include gasification plants (producing low-BTU gas) intermediate to the mines and power plants.

c. *Coal conversion scenario*

Energy development will emphasize construction and operation of large coal conversion plants, producing high grade gaseous and fuels mainly for export outside the region via pipelines.

d. *Coal export scenario*

Coal mined within the region will be shipped East to fuel Midwestern power plants and other sources of demand. Construction of in-region generating or conversion plants will not exceed the level needed to supply regional demand.

e. *Mixed scenario*

Energy development will occur via a mix of mine-mouth plants, coal conversion facilities, and coal exports. The high version of this scenario represents the Department of the Interior's prediction of the most likely mix, and level of overall energy production, in light of projected regional and national demands.

The high versions of the mine-mouth, coal conversion, and coal export scenarios will generally represent an upper limit to the proposed development, based on demand considerations. The alternative strategies will be analyzed to determine economic, social and environmental implications locally, regionally, and nationally. These implications will be arrayed against a variety of goals and the results presented as objectively as possible.

4. *Reports.* A preliminary summary report will be issued during June 1974 indicating the results of work to date. In addition, it will indicate further analysis, research, and other action required to meet the stated objective. Backup detailed reports on various topics will also be produced.

As of this time, the several reports and their outlines are visualized as follows:

Organization and Participation

A schematic of the organization is shown in Attachment #2. Policy guidance and overall direction are provided by a high-level Program Review Board, which has ultimate authority over the Program. Day-to-day direction is in the hands of the Program Management Team. The Program Review Board will seek advice from other Federal agencies and State, citizen, and industrial organizations as appropriate. Individual advisors will be designated or approved by the Review Board. Advisory Groups, as well as interested private entities may also desire to exchange information with the Program Management Team and participate in the working groups. Such participation will be encouraged to the fullest possible extent.

Implementation of the program will be the responsibility of a Program Management Team, consisting of representatives from each of the major participating agencies. The Program work will be carried out by a cross-section of full and part time staff under the overall direction of the Program Management Team.

The Program Management Team has direct responsibility for developing the Program Design, coordinating the flow of work and preparing the Final Report. Work Groups representing particular areas of expertise and drawing from various agencies will be formed to carry out basic data collection and analysis. The Groups will be of interagency composition, including expertise from the State and local levels as well as the private sector. Group leaders have been selected on the basis of technical expertise in each particular subject.

Members of several groups may be called together on ad hoc task forces to work on specific topics, such as the analysis of impact for selected scenarios.

Some tasks, particularly those development regional profile data, will be assigned, fully or partially, to on-going State or Federal programs. As an example, one or more tasks or portions of several tasks related to surface re-

sources will be carried out by Agriculture's Surface Environment and Mining (SEAM) program, which will coordinate State, local, and Federal involvement through programs now in the planning stage. Leadership in other tasks or sub-tasks will be assigned to individuals or groups which now have key national roles, such as the collection and display of the geologic data base by the U.S. Geological Survey and the offices of various State geologists. As another example, on-going studies with EPA of national supply and [d]emand of energy and clean fuels will likely provide information useful to specific tasks under the development of constraints and strategies and under the analysis of alternatives.

Maximum reference to and use of on-going programs should prevent duplication of effort and speed completion of key jobs. However, full involvement of public agencies, industry, and individual knowledgeable about a subject will be necessary.

The Advisory Groups are expected to serve in effective review roles. Comments of participants can be incorporated directly in final papers, ensuring participation by all interested parties at the most opportune time. A specially selected group of Technical Advisors will be called upon as needed to review the efforts and products of the Work Groups.

Program Support

Manpower and funding to carry out the Program will be contributed by government agencies and redirected from other programs. Volunteers and contributed services from private organizations will be welcomed and utilized.

The Program Management Team must devote full time to the NGPRP.

* * * *

EXHIBIT IX

[SEAL]

UNITED STATES
DEPARTMENT OF THE INTERIOROFFICE OF THE SECRETARY
Washington, D.C. 20240

Jan. 24, 1973

Memorandum

To:

Assistant Secretary—Fish and Wildlife and Parks
 Assistant Secretary—Management and Budget
 Assistant Secretary—Mineral Resources
 Assistant Secretary—Program Policy
 Assistant Secretary—Public Land Management
 Assistant Secretary—Water and Power Resources

From:

The Secretary

Subject:

Control of Resource Development

The magnitude of potential resource development in the Southwest, the Northern Great Plains and elsewhere will require very careful attention in order to achieve environmentally acceptable operations under existing regulations. Until there is better legislation for leasing, mining and land use, this must be achieved by incorporating appropriate specific stipulations in all agreements involving major Interior actions and both the actions and the controlling stipulations must be carefully reviewed at the Departmental level to insure compliance with the spirit of the Environmental Policy Act.

The attached memoranda from late Under Secretary Pecora (June 16, 1971) and me (June 30, 1972) were aimed at providing this control over development of Southwest energy and Northern Great Plains resources, respectively. The "Outlines and Schedules of Actions to

Implement a Coal Leasing Program," issued by Bureau of Land Management memorandum dated December 4, 1972, is consistent with the Department objectives underlying this control system.

To insure continuing careful attention to the environmental significance of proposed resource development, all major Federal actions significantly affecting the quality of the human environment regarding resource development and, in addition, all actions of any kind regarding development of coal related to the Southwest and Northern Great Plains covered by the June 16, 1971, and June 30, 1972, memoranda referred to above shall be submitted to the Under Secretary for review and concurrence prior to execution. Other actions, which have not been identified for special review, shall be guided by the attached statement of Department policy.

/s/ Rogers C. B. Morton
 ROGERS C. B. MORTON

Enclosures

cc: Under Secretary; Solicitor; Executive Assistant to the Secretary

[SEAL]

UNITED STATES
DEPARTMENT OF THE INTERIOR

OFFICE OF THE SECRETARY
Washington, D.C. 20240

Jun. 16, 1971

Memorandum

To:

Assistant Secretary for Fish and Wildlife and Parks
Assistant Secretary, Mineral Resources
Assistant Secretary, Public Land Management
Assistant Secretary, Water and Power Resources
Solicitor

From:

Under Secretary

Subject:

Federal Actions Relative to Pacific Southwest Electric Power Plants

Effective immediately any final action on permits, rights-of-way, grants, leases, contracts or memoranda of understanding affecting lands or water under the jurisdiction of the Department of the Interior, and approval of equipment specifications required by contract or other agreements, which may be concerned with the construction, expansion or operation of the Four Corners, San Juan, Mohave, Navajo, Huntington Canyon and Kaiparowits thermal electric generating plants and related facilities must be approved by the Under Secretary.

/s/ W. Pecora
Under Secretary

INTERIOR POLICY CONCERNING NATURAL
RESOURCES AND ENVIRONMENTAL QUALITY

The Department of the Interior is the Federal agency primarily responsible for management of much of the Nation's renewable and nonrenewable living and non-living resources. This requires protection of the environment in all development activities. In meeting this responsibility, the Department must strive for a balance between resource utilization and environmental quality. Both of these objectives must receive increased emphasis if an acceptable quality of life is to be maintained in the face of increasing resource needs.

It is, therefore, the policy of the Department of the Interior that, except where it would be legally impermissible:

- All natural resource development and management programs and plans formulated or implemented within the Department of the Interior shall conform to applicable Federal and State environmental quality standards and shall include special stipulations to mitigate potential environmental damages not adequately covered by State and Federal standards.
- All leases, contracts, agreements or other arrangements concerning living and nonliving resource management or development on all lands administered by the Department will be structured to assure that all operations on such lands conform to applicable State and Federal environmental quality standards and that they include special stipulations to mitigate potential environmental damage not adequately covered by existing State and Federal standards.
- All leases, contracts, agreements and other arrangements indirectly related to living and non-living resource development on public or private lands, such as those for Federal water services, rights-of-way across Interior-administered lands and other Federal involvements, will contain stip-

ulations to insure that development operations conform to applicable State and Federal environmental quality standards and comply with any special conditions deemed necessary by the Department of the Interior for protection of the environment.

- All leases, contracts, agreements and other arrangements that predate current environmental quality standards, and do not require compliance with such standards, shall be administered or revised where possible, and appropriate, to require an upgrading of technology in an orderly, practical schedule to achieve compliance with applicable Federal and State standards and special stipulations considered necessary by the Department for proper environmental protection.
- Resource developers seeking leases, contracts, agreements or other arrangements with the Department of the Interior shall submit advance plans of proposed operations for Departmental approval, unless this would be manifestly impractical in a given set of circumstances, and shall establish a reporting system on performance to regularly demonstrate compliance with applicable environmental quality standards and special stipulations. The Department will establish guidelines to facilitate submission and review of such plans.
- These policy guidelines shall apply to Indian lands insofar as they are not incompatible with the trust responsibilities of the Secretary and the Department of the Interior.

EXHIBIT 5

UNITED STATES
DEPARTMENT OF THE INTERIOR

OFFICE OF THE SECRETARY
Washington, D.C. 20240

[SEAL]

Apr. 18, 1973

Memorandum

To:

Assistant Secretary for Congressional & Public Affairs

From:

Acting Secretary of the Interior
(Sgn) John C. Whitaker

Subject:

Department policy regarding mineral leasing of Indian lands

During my recent testimony before the Senate Interior and Insular Affairs Committee I was requested to submit a statement of Department policy regarding mineral leasing of Indian lands. The following statement set forth that policy.

The policy of the Department of the Interior is to approve mineral leasing on Indian lands where:

- (a) the tribal or individual Indian land-owner desires to dispose of the minerals;
- (b) the terms and conditions of the lease are in the best interest of the Indian landowner; and
- (c) appropriate environmental safeguards are imposed on the lessee, including satisfaction of the requirements of NEPA.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1182-73

SIERRA CLUB, ET AL., PLAINTIFFS

v.

ROGERS C. B. MORTON, ET AL., DEFENDANTS

ANSWERS OF DEFENDANT,
ROGERS C. B. MORTON, SECRETARY OF THE
INTERIOR, TO PLAINTIFFS' REVISED
SUPPLEMENTAL INTERROGATORIES TO
FEDERAL DEFENDANTS

The following answers are submitted on behalf of Defendant Rogers C. B. Morton, Secretary of the Interior to PLAINTIFFS' REVISED SUPPLEMENTAL INTERROGATORIES TO FEDERAL DEFENDANTS.

Interrogatory No. 1: Have any coal leases been issued by the Secretary of the Interior since February 17, 1973, which are not within the area subject to this litigation? If the answer is yes, where are those leases located and how many leases and how much acreage is involved:

Answer: The following coal leases have been issued by the Department of the Interior since February 17, 1973:

Lease	State	Date of Issuance	Acreage
ES-9403	Pennsylvania	7/1/74	29.661
ES-12284	Alabama	6/1/74	2388.24
U-13097	Utah	5/1/74	1310.00
C-17130	Colorado	12/1/73	241.10
			4018.95

Interrogatory No. 2: During 1974, did the Department of the Interior offer a coal lease on land near Stanton,

North Dakota? Was no lease issued only because no bid for the lease was made?

Answer: During 1974, the Department of the Interior offered to lease approximately 320 acres located three to five miles south of Stanton, North Dakota in Mercer County. On or before July 9, 1974, the date of the sale, no bids were received and therefore no lease was issued.

Interrogatory No. 3: Is the Department of the Interior presently considering entering into any leases under the four conditions set forth in the announcement of February 17, 1973? If the answer is yes, please provide the following information as to each lease:

- the name of the person or corporation seeking the lease
- the agency of the Department of Interior involved
- the acreage involved
- the approximate location.

Answer: No. The Department of the Interior has applications for leases pending before it. However, the Department has not concluded that any of these applications satisfy the four conditions of the short term leasing policy announced by Secretary Morton in the news release of February 17, 1973 and consequently is not at the stage of considering the offering of any leases as a result of those applications.

Interrogatory No. 4: When approximately does the Secretary of the Interior expect the moratorium on federal coal leasing to end? If the moratorium will end based on the occurrence of particular events, please state what events these are.

Answer: It is assumed that by the phrase "moratorium on federal coal leasing policy" the Plaintiffs are referring to the short term leasing policy announced in Secretary Morton's news release of February 17, 1973, and discussed in item 8 of Secretary Morton's October 26, 1973

affidavit. As stated in that item the short term leasing policy will remain in effect at least until after the issuance of the final coal programmatic EIS and the development of a planning system to determine the size, timing and location of future coal leases. The answer to interrogatory 30 discusses when the final coal programmatic EIS will be issued. It is possible that after the issuance of the final coal programmatic EIS the decision will be made to continue the short term coal leasing policy.

Interrogatory No. 5: Does the moratorium of February 17, 1973, also apply to preference-right coal leases?

Answer: It is assumed that by the phrase "moratorium of February 17, 1973" that Plaintiffs are referring to the short term leasing policy announced in Secretary Morton's news release of February 17, 1973. That news release states that coal leases will be issued only under the conditions set forth therein and no distinction is made between competitive and preference right leases. Therefore it must be concluded that the short term criteria have applied to preference right lease applications as well as competitive lease applications. Recently the Solicitor's office has advised that refusal to issue a preference right coal lease because it does not meet the short term criteria would be improper. Consideration is now being given to revising the short term leasing policy based upon this advice.

Interrogatory No. 6: Has the Secretary of the Interior granted any preference-right coal leases in the Northern Great Plains since February 17, 1973? If the answer is yes, please provide the following information as to each lease.

- a. the name of the person or corporation obtaining the lease
- b. the agency of the Department of the Interior entering into the lease
- c. the date of the lease
- d. the acreage involved

e. the approximate location

f. the reason for the lease despite the moratorium.

Answer: For the purpose of these interrogatories, Plaintiffs have defined the "Northern Great Plains" as the "four state area of Wyoming, Montana, North Dakota and South Dakota". The area included within that four state area is substantially broader than the "Northern Great Plains region" described in the complaint which is the subject of this litigation. The Secretary of the Interior has not issued any preference right coal leases within the States of Wyoming, Montana, North Dakota and South Dakota since February 17, 1973.

Interrogatory No. 7: State how many applications for coal leases in the Northern Great Plains are currently pending in the Department of the Interior and the total acreage they involve. Please provide this information separately for each agency of the Department of the Interior.

Answer: For the purpose of these interrogatories, Plaintiffs have defined the "Northern Great Plains" as the "four state area of Wyoming, Montana, North Dakota, and South Dakota". The area included within that four state area is substantially broader than the "Northern Great Plains region" described in the complaint which is the subject of this litigation. There are 42 competitive lease applications pending for a total of 272,126.86 acres in the States of Wyoming, Montana, North Dakota, and South Dakota. All of the applications are before the Bureau of Land Management.

Interrogatory No. 8: State how many applications for preference-right coal leases in the Northern Great Plains are currently pending in the Department of the Interior and the total acreage they involve. Please provide this information separately for each agency of the Department of the Interior.

Answer: For the purpose of these interrogatories, Plaintiffs have defined the "Northern Great Plains" as the "four state area of Wyoming, Montana, North Da-

kota, and South Dakota". The area included within that four state area is substantially broader than the "Northern Great Plains region" described in the complaint which is the subject of this litigation. There are 80 preference right lease applications pending for a total of 201,668.11 acres in the States of Wyoming, Montana, North Dakota, and South Dakota. All of the applications are before the Bureau of Land Management.

Interrogatory No. 9: State how many applications for coal prospecting permits in the Northern Great Plains are currently pending in the Department of the Interior and the total acreage they involve. Please provide this information separately for each agency of the Department of the Interior.

Answer: Secretarial Order No. 2952 (attached as Exhibit II to the October 26, 1973 affidavit of Rogers C. B. Morton) directed that all pending applications for coal prospecting permits were to be rejected and that applications submitted in the future were to be promptly rejected. Pursuant to this policy all pending applications have been rejected and new applications are promptly rejected.

Interrogatory No. 10: Since February 17, 1973, has the Secretary approved any coal leases or permits on Indian lands which are not within the area subject to this litigation? If the answer is yes, where are those leases located and how much acreage is involved.

Answer: The Department of the Interior has not approved any coal leases or permits on Indian lands since February 17, 1973.

Interrogatory No. 11: State how many applications for coal leases on lands belonging to Indian tribes in the Northern Great Plains are currently pending in the Department of the Interior and the total acreage they involve.

Answer: For the purpose of these interrogatories, Plaintiffs have defined the "Northern Great Plains" as the "four state area of Wyoming, Montana, North Da-

kota, and South Dakota". The area included within that four state area is substantially broader than the "Northern Great Plains region" described in the complaint which is the subject of this litigation. There are no applications for coal leases on lands belonging to Indian tribes pending in the Department of the Interior. The Department either approves leases negotiated by the Indian tribes or approves leases which are a result of a preference right to a lease or an option to lease as part of a prospecting permit. At present there are applications for approval of coal leases on tribal lands in the States of Wyoming, Montana, North Dakota and South Dakota. The total acreage involved is 176,481.32 acres. The number of leases which could result from these applications is uncertain. Each request is the result of a preference right or option as part of a permit. A lease is limited to 2,560 acres by regulation, 25 CFR § 171.9 (b) (1), and each request is to go to lease on in excess of that limitation. Whether the acreage limitation will be waived according to the terms of the regulation to allow lease acreage in excess of the limitation or whether leases will be limited to 2,560 acres can not at this time be indicated.

Interrogatory No. 12: State how many applications for coal prospecting permits on lands belonging to Indian tribes in the Northern Great Plains are currently pending in the Department of the Interior and the total acreage they involve.

Answer: For the purpose of these interrogatories, Plaintiffs have defined the "Northern Great Plains" as the "four state area of Wyoming, Montana, North Dakota, and South Dakota". The area included within that four state area is substantially broader than the "Northern Great Plains region" described in the complaint which is the subject of this litigation. There are no applications for coal prospecting permits on lands belonging to Indian tribes pending in the Department of the Interior. The Department only approves permits negotiated by the Indian tribes. At present there are no ap-

plications for approval of coal prospecting permits on Indian lands in the States of Wyoming, Montana, North Dakota and South Dakota.

Interrogatory No. 13: State how many coal leases approved by the Department of the Interior within the Northern Great Plains are currently outstanding and the total acreage involved. Please provide this information separately for each agency of the Department of the Interior and for leases on Indian lands. Please also provide this information separately for the eastern Powder River basin as that term is defined in the Eastern Powder River Environmental Impact Statement.

Answer: For the purpose of these interrogatories, Plaintiffs have defined the "Northern Great Plains" as the "four state area of Wyoming, Montana, North Dakota, and South Dakota". The area included within that four state area is substantially broader than the "Northern Great Plains region" described in the complaint which is the subject of this litigation. In the States of Wyoming, Montana, North Dakota and South Dakota there are 124 outstanding leases issued by the Bureau of Land Management for a total of 251,449 acres and 10 outstanding leases on Indian lands for a total of 91,396 acres. The Eastern Powder River Coal Basin as defined in the Eastern Powder River Coal Basin EIS contains 42 of the outstanding leases issued by the Bureau of Land Management for a total of 93,075 acres and none of the leases for Indian lands.

Interrogatory No. 14: State how many of these outstanding leases in the Northern Great Plains are not yet covered by approved mining plans and how many leases are covered by approved mining plans. As to each of the two categories, state how much acreage is involved. Please give this information separately for each agency of the Department of the Interior and for Indian lands.

Answer: For the purpose of these interrogatories, Plaintiffs have defined the "Northern Great Plains" as the "four state area of Wyoming, Montana, North Dakota, and South Dakota". The area included within that

four state area is substantially broader than the "Northern Great Plains region" described in the complaint which is the subject of this litigation. In the States of Wyoming, Montana, North Dakota and South Dakota 95 leases issued by the Bureau of Land Management with a total acreage of 196,642 acres are not the subject of an approved mining plan and 9 outstanding leases on Indian lands with a total of 76,650 acres are not the subject of an approved mining plan. In that area 29 leases issued by the Bureau of Land Management with a total of 54,807 acres have acreage within an approved mining plan and one lease on Indian lands with a total of 14,746 has acreage within an approved mining plan.

Interrogatory No. 15: State how many mining plans have been approved by the Secretary of the Interior within the Northern Great Plains since October 26, 1973, when Secretary Morton submitted his affidavit. For each mining plan, please provide the following information as to each mining plan:

- a. name of person or corporation submitting the plan
- b. agency of the Department of the Interior to which the plan was submitted
- c. date of the submission
- d. acreage involved
- e. approximate location.

Answer: For the purpose of these interrogatories, Plaintiffs have defined the "Northern Great Plains" as the "four state area of Wyoming, Montana, North Dakota, and South Dakota". The area included within that four state area is substantially broader than the "Northern Great Plains region" described in the complaint which is the subject of this litigation. Mining plans are submitted to the Geological Survey. In the States of Wyoming, Montana, North Dakota and South Dakota four mining plans have been approved since October 26, 1973.

Company	Date of Submission	Acreage in Plan	Location
Amax Coal Company (Modification of mining plan)	November 7, 1973	72	Campbell Co., Wyoming
Peabody Coal Co.	March 13, 1973	640	Rosebud Co., Montana
Western Energy	October 12, 1973	150	Rosebud Co., Montana
Westmoreland Resources	November 1, 1972	245	Hardin Co., Montana

Interrogatory No. 16: State how many applications for approval of mining plans in the Northern Great Plains are currently pending in the Department of the Interior and the total acreage involved. Please provide this information separately for each agency of the Department of the Interior for Indian lands.

Answer: For the purpose of these interrogatories, Plaintiffs have defined the "Northern Great Plains" as the "four state area of Wyoming, Montana, North Dakota, and South Dakota". The area included within that four state area is substantially broader than the "Northern Great Plains region" described in the complaint which is the subject of this litigation. In the States of Wyoming, Montana, North Dakota, and South Dakota there are currently pending before the Geological Survey 12 mining plans which involve 12 leases with a total of 78,776 acres. One application is for approval of a mining plan on one lease for 30,248 acres of Indian land.

Interrogatory No. 17: State how many coal prospecting permits approved by the Department of the Interior within the Northern Great Plains giving a preference-right to coal leases are currently outstanding in the Northern Great Plains and the total acreage involved. Please provide this information separately for each agency of the Department of the Interior and for Indian lands. Please also provide this information separately for the

eastern Powder River basin as that term is defined in the Eastern Powder River Environmental Impact Statement.

Answer: For the purpose of these interrogatories, Plaintiffs have defined the "Northern Great Plains" as the "four state area of Wyoming, Montana, North Dakota, and South Dakota". The area included within that four state area is substantially broader than the "Northern Great Plains region" described in the complaint which is the subject of this litigation. All coal prospecting permits issued by the Department of the Interior are issued pursuant to Section 2 of the Mineral Leasing Act of 1920 (30 U.S.C. § 201) which states that a permittee shall be entitled to a lease if the permittee shows that the lands contain coal in commercial quantities. In the States of Wyoming, Montana, North Dakota, and South Dakota there are 30 outstanding coal prospecting permits issued by the Department of the Interior including 82,952.18 acres. With respect to coal prospecting permits on Indian lands in the four state area, all outstanding permits grant the right to the permittee to obtain a lease. There are 17 outstanding coal prospecting permits on Indian lands including 100,734.44 acres. The Eastern Powder River Coal Basin as defined in the Eastern Powder River Coal Basin EIS contains 26 of the outstanding coal prospecting permits including 64,252 acres, none of which are on Indian land.

Interrogatory No. 18: State how many coal prospecting permits approved by the Department of the Interior within the Northern Great Plains not giving a preference-right to coal leases are currently outstanding in the Northern Great Plains and the total acreage involved. Please provide this information separately for each agency of the Department of the Interior and for Indian lands. Please also provide this information separately for the eastern Powder River basin as that term is defined in the Eastern Powder River Environmental Impact Statement.

Answer: See answer to Interrogatory No. 17 above.

Interrogatory No. 19: State when the Department of Agriculture expects to complete the Environmental Analysis Reports on the applications for permits for rights-of-way described in paragraphs 30 of the Affidavit of Russell T. McCrory and when it expects to decide upon whether to grant or deny these applications. State what kind of project each of these applications relate to (for example, power plants or strip mines) and the site of the project (for example, megawatts of electricity or tons of coal to be mined annually).

Answer: This Interrogatory does not relate to the Department of the Interior.

Interrogatory No. 20: Since June 30, 1974, has the Department of the Interior granted any permits for rights-of-way across lands under its jurisdiction for activities relating to coal development in the Northern Great Plains? If the answer is yes, state for each permit the approximate location, the agency granting the permit, the name of the permittee, the amount of land involved, and the purpose of the permit.

Answer: For the purpose of these interrogatories, Plaintiffs have defined the "Northern Great Plains" as the "four state area of Wyoming, Montana, North Dakota, and South Dakota". The area included within that four state area is substantially broader than the "Northern Great Plains region" described in the complaint which is the subject of this litigation. Since June 30, 1974, the Department of the Interior has through the Bureau of Land Management issued only two rights-of-way permits in the State of Wyoming, Montana, North Dakota and South Dakota. These two permits were issued by the Bureau of Land Management and are for locations outside the Northern Great Plains.

Type of Right-of-Way	Approximate Location	Name of Permittee	Purpose	Land Involved
Railroad	Tps. 22, 23, N., R. 83 W. Carbon County	Union Pacific Railroad Co.	to provide rail service to and from coal loading facilities	200 feet wide, 7.6 miles in length
Electric power line	Tps. 22, 23, N., R. 83 W., Carbon County	Pacific Power & Light Company	to provide power for coal mining operations	100 feet wide, 6.301 miles in length

Interrogatory No. 21: State how many applications for permits for rights-of-way across lands for activities relating to coal development in the Northern Great Plains are currently pending in the Department of the Interior.

Answer: For the purpose of these interrogatories, Plaintiffs have defined the "Northern Great Plains" as the "four state area of Wyoming, Montana, North Dakota, and South Dakota". The area included within that four state area is substantially broader than the "Northern Great Plains region" described in the complaint which is the subject of this litigation. In the States of Wyoming, Montana, North Dakota, and South Dakota there are 14 applications pending before the Department of the Interior for permits for rights-of-way across lands under the jurisdiction of the Department of the Interior for activities relating to coal development.

Interrogatory No. 22: Since June 30, 1974, has the Corps of Engineers approved any permits for rights-of-way across navigable rivers or for the placement of structures in navigable rivers for activities relating to coal development within the Northern Great Plains. If the answer is yes, state for each permit the approximate location, the name of the permittee, and the purpose of the permit.

Answer: This Interrogatory does not relate to the Department of the Interior.

Interrogatory No. 23: Has the time for comment on the draft interim report of the Northern Great Plains

Resource Program been extended until November 15, 1974?

Answer: The time for comment by Northern Great Plains Resource Program Participants on the draft report has been extended to November 11, 1974.

Interrogatory No. 24: Will a final report eventually be prepared for the Northern Great Plains Resource Program. If the answer is yes, state when that final report is expected to be finished and what further studies are expected to be carried out between the date of the interim report and the final report.

Answer: The final interim report is to be released by the end of February 1975. No decisions have been made concerning whether a final report will be prepared by the Northern Great Plains Resource Program and what studies in specific areas will be conducted by the appropriate Federal and State entities.

Interrogatory No. 25: Pending the completion of the interim report and, if one is to be prepared, the final report on the Northern Great Plains Resource Program, state in detail what actions, if any, will be taken with respect to pending applications for federal coal leases, prospecting permits, mining plans, rights-of-way and placement of structures within navigable rivers relating to coal development within the Northern Great Plains.

Answer: As was stated in item 16 of Secretary Morton's October 26, 1974 affidavit:

The policy of the Department with respect to resource development in the Northern Great Plains Area [not as defined by Plaintiffs for the purpose of these interrogatories] was announced in the memorandum of June 30, 1972 . . . and reasserted in the memorandum of January 24, 1973 The purpose of the policy is to insure that development does not proceed based solely on single purpose studies incapable of developing comprehensive information or by piecemeal actions which restrict future options. To fulfill that purpose the granting or

approval of leases, special use permits and all types of rights-of-way across public lands, the delivery and sale of water and approval of mining plans relating to coal development in the Northern Great Plains Area [not as defined by Plaintiffs for the purpose of these interrogatories] will be held in abeyance pending the availability and analysis of the interim report from the NGPRP study or submitted to the Under Secretary for review and concurrence prior to execution.

Interrogatory No. 26: State whether any federal agency contemplates the preparation of any future environmental-impact statements on a regional or subregional basis within the Northern Great Plains relating to coal development. If the answer is yes, identify the region to be covered by each statement and state the expected completion date for each statement and the agency principally involved. State also what actions, if any, the federal agencies anticipate taking with respect to coal leases, prospecting permits, mining plans, rights-of-way and placement of structures within navigable rivers within a particular region or subregion prior to completion of any impact statement on that region or subregion.

Answer: Decisions concerning the scope of future statements will be based upon information developed from such sources as the coal programmatic EIS and the NGPRP and the nature and proximity of pending and proposed projects. As stated in Secretary Morton's October 26, 1973 affidavit, "It is possible a decision will be made to prepare a statement for the entire Northern Great Plains region, but information available may indicate that statements on smaller subregions, geologic structures, basins or selected individual actions will fulfill the policy and procedural requirements of the National Environmental Policy Act in a more satisfactory manner." That statement still stands as the most definitive description of the Department's posture with respect to future statements. At present the four statements identified below are in various stages of development. Each of these statements will contain some re-

gional or subregional analysis. Due to the various stages of development not all of the information requested can be provided.

- a. Projected Coal Development, Crow Indian Reservation, Montana.

The Bureau of Indian Affairs has responsibility for the preparation of this statement on the probable effect of development of the reservation and ceded area coal resources of the Crow Indian Tribe. A preliminary draft is undergoing review within the Department.

- b. Montana Power Company, Colstrip Powerplant, Colstrip, Montana.

The Bureau of Land Management, which has responsibility for the preparation of this statement, has suspended preparation pending completion of studies in January 1975 by the State of Montana which has authority with respect to utility siting.

- c. Shell Oil Company Proposal to mine coal on the Crow Indian Reservation, Montana.

The Geological Survey has been assigned responsibility for the preparation of this statement. The drafting of the statement has not commenced.

- d. Proposed Wyoming-Arkansas Coal Slurry Pipeline.

The Bureau of Land Management has made preliminary plans for the preparation of the statement.

The Department of the Interior is not in a position to project what actions, if any, will be taken within a particular region or subregion prior to completion of an impact statement on that region or subregion.

Interrogatory No. 27: State whether any water has been released pursuant to the options or contracts described in the Affidavit of William W. Lyons and, if so, how

much. Please provide this information separately as to each river, stream, reservoir and lake.

Answer: No water has been released pursuant to options or contracts described in the Affidavit of William W. Lyons.

Interrogatory No. 28: State whether any applications for the release of water pursuant to the options or contracts described in the Affidavit of William W. Lyons are currently pending in the Department of the Interior and state the total amount of water involved. Please provide this information separately as to each river, stream, reservoir and lake.

Answer: There are no applications for release of water pursuant to options or contracts described in the Affidavit of William W. Lyons.

Interrogatory No. 29: Describe the expected schedule for taking action to begin the diversion of water from the Green River and the Fontenelle Reservoir pursuant to any proposed or existing contract between the United States and the State of Wyoming for which a final environmental-impact statement was issued on September 5, 1974.

Answer: The Department of the Interior does not have a schedule or an expected schedule for taking action to begin diversion of water from the Green River and the Fontenelle Reservoir.

Interrogatory No. 30: State whether a new draft environmental-impact statement will be prepared for the Federal Coal Leasing Program. If the answer is yes, state when such a new draft statement is expected to be issued. Whether the answer is yes or no, state when the final statement is expected to be issued.

Answer: The Department of the Interior has not determined whether a new draft Environmental Impact Statement on the Proposed Federal Coal Leasing Program will be prepared. The Department currently projects that the final statement will be issued in early 1975.

Interrogatory No. 31: State when the Department of the Interior expects to take action to approve or disapprove the four mining plans described in the Eastern Powder River Basin draft environmental-impact statement.

Answer: The Department of the Interior expects to be in a position to take action with respect to the four mining plans described in the Eastern Powder River Coal Basin EIS in late November or early December 1974.

Interrogatory No. 32: State when the Department of the Interior expects to take action to begin implementing the federal coal leasing program which is the subject of the draft environmental statement on the Federal Coal Leasing Program. State what actions the Department of the Interior expects to take, pursuant to the federal coal leasing program, with respect to coal leases, prospecting permits and mining plans in the Northern Great Plains, when these actions are expected to begin, and the amount of acreage likely to be involved.

Answer: The Department of the Interior cannot determine or project when it expects to take actions, or what actions it expects to take to begin implementation of the Federal coal leasing program which is the subject of the coal programmatic EIS prior to the issuance of the final statement.

Interrogatory No. 33: State the names of the witnesses who will appear on behalf of the federal defendants at the evidentiary hearing on November 6, 1974.

Answer: Oral notice of the intention of the Department of the Interior to have William W. Lyons available to be called as a witness at the November 6, 1974 hearing was given to counsel for the Plaintiffs on November 5, 1974.

Interrogatory No. 34: For each witness listed in response to Interrogatory No. 33, briefly summarize the subject matter of his testimony.

Answer: The testimony of William W. Lyons was taken at the hearing on November 6, 1974 and therefore a summary of the subject matter is not appropriate.

/s/ John C. Whitaker
Under Secretary
U. S. Department of the Interior

Subscribed and sworn to before me this 11th day of November 1974.

/s/ Sandra Gazzi
Notary Public

My Commission expires April 14, 1977

CERTIFICATE OF SERVICE

I hereby certify that on November 11, 1974, I served a copy of the foregoing answers to plaintiffs' supplemental interrogatories upon Bruce J. Terris, Esquire, by hand delivering it to his office and I have caused copies thereof to be mailed to the following counsel for intervening defendants:

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/s/ Herbert Pittle
HERBERT PITTLE

SIERRA CLUB, ET AL., PLAINTIFFS

v.

ROGERS C. B. MORTON, ET AL., DEFENDANTS

Civil No. 1182-73

DEFENDANTS' RESPONSE TO PLAINTIFFS'
SUPPLEMENTAL INTERROGATORY NO. 19

City of Washington)
) ss
 District of Columbia)

JAMES P. PERRY, being duly sworn, deposes and says:

1. I am James P. Perry, General Attorney, Natural Resources Division, Office of the General Counsel, representing the United States Department of Agriculture.

2. Based on information furnished to me by the National Forest Systems Division, Forest Service, United States Department of Agriculture, I make the following response to Plaintiffs' Supplemental Interrogatory No. 19 concerning applications for permits for rights-of-way.

3. The Forest Service has administratively assigned the following target dates as goals for completing Environmental Analysis Reports (EAR) on the four applications for permits for rights-of-way, listed in the McRorey affidavit dated October 25, 1974:

Applicant	Permit Sought	Target EAR Completion Date
Wycoalgas Co.	Water transmission line right-of-way	3rd Q 1975
Rochelle Coal Co.	Conveyor belt right-of-way	3rd Q 1975
Atlantic Richfield Co.	Plant site and railroad spur right-of-way	2nd Q 1975
Rochelle Coal Co.	Railroad spur right-of-way	2nd Q 1975

The target dates represent the earliest possible completion date, assuming no delays of any kind.

The Environmental Analysis Reports require, among other things, a determination as to whether an Environmental Impact Statement is required, consequently the Forest Service has no accurate estimate concerning the date of any decisions to grant or deny the pending applications.

4. The Wycoalgas, Inc., application for a right-of-way proposes the following:

Purpose of use. The right-of-way will be used to construct and operate a pipeline to deliver water to a proposed coal gasification plant.

Improvements. The pipeline will be 22 inches in diameter with a wall thickness of 0.25 inches. The line will be welded steel and will be internally and externally coated. Cover will be a minimum of 42 inches.

Land Area. Length, 5.75 miles x width, 66 feet = 46 acres.

5. The Rochelle Coal Company application for a conveyor belt right-of-way proposes the following:

Purpose of use. The right-of-way will be used to construct and operate an overland belt conveyor between the mine site and the gasification plant. Coal will be delivered to the gasification plant and ash delivered to the mine.

Improvements. The belt conveyor will be a 60 inch wide, double decked rigid frame with a driving drum 48-54 inches in diameter. Snub pulleys and take-ups will be in the 40 inch diameter range. There will be probably four segments, possibly five, driven by 2500 H.P. electric motors, with suitable speed reducers. In addition there will be an electric power transmission line and an improved road.

Land Area. Length, 3.71 miles x width 100 feet = 45 acres.

6. The Atlantic Richfield Co. application proposes the following:

Purpose of use. To construct, operate, and maintain a coal handling and loading facility to include mine headquarters and operational area which will be used in conjunction with the adjacent coal lease leased to Atlantic Richfield Company. This land located primarily on the Thunder Basin National Grassland herein applied for will accommodate any expansion of the facility occasioned by an increase in production of coal resulting from greater customer demand.

Land area. Length, 19,000 feet x width, 300 feet = 130.85 acres which is included in the 520 acres applied for.

7. Rochelle Coal Co. application for a railroad spur right-of-way proposes the following:

Purpose of use. The right-of-way will be used to construct and operate a standard gauge railroad between the mine site and the Burlington Northern and Chicago Northwestern mainline. Coal will be delivered to the gasification plant and ash delivered to the mine.

Improvements. A standard gauge railroad track, complete with necessary dirtwork, ballast, drainage structures, and animal crossings.

Land area. Length, 1.00 mile x width, 150 feet = 18.3 acres.

/s/ James P. Perry
JAMES P. PERRY

Subscribed and sworn to before me this 12th day of November, 1974.

/s/ [Illegible]
Notary Public

My commission expires: March 16, 1973

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

Civil No. 1182-73

SIERRA CLUB, ET AL., PLAINTIFFS

v.

ROGERS C. B. MORTON, ET AL., DEFENDANTS

AFFIDAVIT OF RUSSELL P. McROREY

City of Washington)
) ss
District of Columbia)

RUSSELL P. McROREY, being duly sworn deposes and says:

1. I, Russell P. McRorey, am Acting Deputy Chief, Forest Service, United States Department of Agriculture. In such capacity I am a staff officer to the Chief of the Forest Service and a line officer responsible to the Chief having broad program responsibilities for all National Forest System activities on the National Forests and National Grasslands. The program activities include the consideration of applications for the use of National Forest lands and resources, and the granting of permits when appropriate or forwarding Forest Service recommendations to the proper authorizing agency.

2. I have carefully reviewed the Order of the Court of Appeals for the District of Columbia in Civil Action No. 1182-73 dated October 14, 1974, remanding the record to the District Court for further evidentiary hearings. I submit the following information concerning coal-related development activities in the Northern Great Plains Region on lands under the administrative jurisdiction of the Forest Service in answer to those paragraphs of the Order of October 14, 1974, applicable to the Department of Agriculture.

3. In response to paragraph 4 of the Order regarding applications for permits for rights-of-way over lands within National Forests in the Northern Great Plains since June 30, 1974, the Forest Service has received four applications for permits relating to coal development, all on the Thunder Basin National Grasslands, Wyoming, as follows:

<u>Applicant</u>	<u>Permit Sought</u>
Wycoalgas Co.	Water transmission line right-of-way
Rochelle Coal Co.	Conveyor belt right-of-way
Atlantic Richfield Co.	Plant site and railroad spur right-of-way
Rochelle Coal Co.	Railroad spur right-of-way

No action on pending applications will be taken prior to the completion of an Environmental Analysis Report (EAR) by the Forest Service. The EAR requires a determination as to whether an Environmental Impact Statement pursuant to the National Environmental Policy Act is necessary. Until the completion of the Environmental Analysis Report, the administrative record upon which the decision would be made is incomplete and agency consideration of the application on the merits would not be possible.

4. In response to paragraph 6 of the Order concerning preparation of Environmental Impact Statements in the Northern Great Plains Region on other than individual projects, the Forest Service plans or has completed Environmental Impact Statements on the following areas:

<u>Area</u>	<u>State</u>	<u>Completion Date</u>
Badlands Planning Unit, Custer National Forest	North Dakota	August 1974
Rolling Prairie Planning Unit, Custer National Forest	North Dakota	July 1975*
Cave Hills Planning Unit, Custer National Forest	South Dakota	December 1975*
Ashland Division Land Use Plan, Custer National Forest	Montana	May 1976*
Big Horn Land Use Plan, Big Horn National Forest	Wyoming	1977*
Thunder Basin National Grassland Land Use Plan	Wyoming	1977*

*Estimate

The listed Environmental Impact Statements relate to overall land use planning pursuant to the statutory authorities of this Department for the management and administration of the National Forest and National Grasslands and concern coal and other energy development only as one of many considerations in land management.

5. In response to paragraph 7 of the Order, the Forest Service has no plans to grant water rights or water contracts in the Northern Great Plains Regional relating to coal development.

6. In response to paragraph 9 of the Order, the Forest Service has not issued any Environmental Impact Statements on individual projects relating to coal development in the Northern Great Plains Region after February 17, 1973.

/s/ Russell P. McRorey
RUSSELL P. MCROREY

Subscribed and sworn to before me this 25 day of October, 1974.

/s/ Sandra D. Foster
Notary Public

My Commission Expires 9-30-75.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil No. 1182-73

SIERRA CLUB, ET AL., PLAINTIFFS

v.

MORTON, ET AL., DEFENDANTS

AFFIDAVIT OF WILLIAM W. LYONS

City of Washington)
) ss
District of Columbia)

WILLIAM W. LYONS being duly sworn, deposes and says as follows:

I, William W. Lyons am Deputy Under Secretary of the Department of the Interior. In such official capacity I am familiar with the subject matter referred to in the October 14, 1974 Order of the United States Court of Appeals for the District of Columbia Circuit issued in docket No. 74-1389. That Order remanded the record of the above captioned action to this Court for a further evidentiary hearing and delineated nine matters on which the Court of Appeals desired to have the benefit of the District Judge's findings. The purpose of this affidavit is to specifically respond to all the questions contained in the October 14, 1974 Order, except [those] contained in item 4 which relate to matters within the jurisdiction of the Department of Agriculture and the Corps of Engineers. To facilitate coordination between the Order and this affidavit each of the matters, with the exception of number 4, is reproduced below and followed by the response.

Inquiry No. 1. Is the limitation on the issuance by the United States of coal leases announced on February 17, 1973, still in effect? How many leases have been

issued for lands in the Northern Great Plains region since February 17, 1973?

Response: The short term coal leasing policy which was announced by Secretary Rogers C. B. Morton in the news release of February 17, 1973 and set forth in item 8 of Secretary Morton's October 26, 1973 affidavit is still in effect. The Department has not, since February 17, 1973, issued any coal leases in the area subject to this litigation.

Inquiry No. 2. Is the suspension of the issuance by the United States of coal prospecting permits announced on February 13, 1973, still in effect? How many, if any coal prospecting permits have been issued in the Northern Great Plains region since February 13, 1973?

Response: Secretarial Order No. 2952 issued February 13, 1973, which is attached as Exhibit II to the Secretary Morton's October 26, 1973 affidavit and which directed that no coal prospecting permits should be issued, is still in effect. Pursuant to that order no coal prospecting permits have been issued since February 13, 1973.

Inquiry No. 3. To what extent has coal leasing on Indian lands in the Northern Great Plains region been approved by the Department of the Interior since February 17, 1973?

Response: The Department of the Interior has not since February 17, 1973 approved coal leasing on Indian Lands in the area subject to this litigation.

Inquiry No. 5. Has the Northern Great Plains Resources Program interim report been released? Is any further action contemplated regarding that program?

Response: The interim report of the Northern Great Plains Resource Program (NGPRP) has not been finalized. On September 27, 1974, a draft interim report was released to the NGPRP participants for their comments. The Program Management Team is to receive those comments no later than November 1, 1974, and will revise the draft interim report where inconsistencies are noted. The revised report is to be released as the interim report by the end of February 1975. In addition to the interim report, the separate reports of each of the seven NGPRP work groups will be reproduced

and made available for public inspection at various designated locations. Subsequent to the release of the interim report the NGPRP will continue to coordinate Federal and State energy related studies. Further studies in specific areas will be conducted by the appropriate Federal and State entities.

Inquiry No. 6. Does the United States Government contemplate the preparation of any future environmental impact statements—other than statements for individual projects—for the Northern Great Plains area, the Fort Union Formation, or for any subregion thereof?

Response: Decisions concerning the scope of future statements will be based upon information developed from such sources as the coal programmatic EIS and the NGPRP and the nature and proximity of pending and proposed projects. As stated in Secretary Morton's October 26, 1973 affidavit, "It is possible a decision will be made to prepare a statement for the entire Northern Great Plains region, but information available may indicate that statements on smaller subregions, geologic structures, basins or selected individual actions will fulfill the policy and procedural requirements of the National Environmental Policy Act in a more satisfactory manner." That statement still stands as the most definitive description of the Departments posture with respect to future statements.¹

Inquiry No. 7. What is the status of the granting of water rights and water contracts in the Northern Great Plains area?

Response: The following material is an update of the Supplemental answers submitted by the Department

¹ At present four statements are in various stages of development. These are entitled or concern:

- a. Projected Coal Development, Crow Indian Reservation, Montana.
- b. Montana Power Company, Colstrip Powerplant, Colstrip Montana.
- c. Shell Oil Company Proposal to mine coal on the Crow Indian Reservation, Montana.
- d. Proposed Wyoming—Arkansas Coal Slurry Pipeline.

of the Interior in response to Plaintiff's Interrogatory No. 1:

BUREAU OF RECLAMATION

In addition to the response submitted in ANSWERS OF DEFENDANT ROGERS C. B. MORTON, SECRETARY OF THE DEPARTMENT OF THE INTERIOR TO PLAINTIFFS' INTERROGATORIES, the following material is submitted:

Finalization of pending contracts may materialize and require Secretarial approval prior to resolution of this court case. The status of the four previously listed are explained below:

<u>Company</u>	<u>Quantity of Water Acre Feet</u>	<u>Source</u>	<u>Status</u>
Basin Electric	5,600	Keyhole Reservoir	Denied ²
Mobil Oil	50,000	Boysen Reservoir	Deferred ³
Atlantic Richfield	7,200	Green Mountain Reservoir	Delete from list ⁴
Carter Oil	18,000	Green Mountain Reservoir	Delete from list ⁴

The following is an update of the answers submitted by the Department of the Interior in response to Interrogatory No. 1:

Bureau of Reclamation: Between 1967 and 1971, the Bureau of Reclamation executed 16 option contracts which would allow diversion of water annually from the Big Horn River for industrial use in Wyoming and Montana (contracts are listed in Exhibit C-1). Author-

² Application denied September 26, 1973, absent applicant assurances from irrigators that part of their water entitlement under Belle Fouché Compact would be available for industrial use.

³ Status undetermined pending review of water requirements for all Indian tribes in the Upper Missouri River Basin.

⁴ Should be deleted from list, since the proposed source of water is not related to Northern Great Plains area.

ity to market an additional 135,000 acre-feet per year from the Wind River system in Wyoming was approved in 1969 (contracts executed so far listed in Exhibit C-2). Reservoirs to regulate flows of the Wind and Big Horn Rivers are part of the Pick-Sloan Missouri Basin Program and include the Yellowtail and Boysen Units.

The Bureau of Reclamation has received 12 applications (from 9 entities) for annual quantities of 502,000 acre-feet from the Yellowtail Unit, and one applicant for 9,000 acre-feet from Boysen Unit (The names of the applicants, the acre-feet required, and the dates of application are listed in Exhibit C-3). Applications have also been received for annual water needs for industrial use totaling 630,000 acre-feet from four entities to divert water from the Wind-Big Horn-Yellowstone River system; 360,000 acre-feet from seven entities to divert water from Fort Peck Reservoir, 18,000 acre-feet from one entity to divert water from Lake Tschida (Heart Butte Unit North Dakota); and 268,816 acre-feet from five entities to divert water from Lake Sakakawea (Garrison Reservoir, North Dakota) (The names of applicants, the acre-feet requested, and the dates of application are listed in Exhibit C-4).

All of these units are part of the Pick-Sloan Missouri Basin Program; some include joint responsibility with the Corps of Engineers. The Departments of the Army and the Interior are currently working to establish common marketing procedures to handle anticipated industrial water sales from mainstem reservoirs in the Missouri River Basin.

The Department of the Interior does not grant water rights. The issuance of a water right permit is solely under the jurisdiction of the individual states. Indian water rights are dealt with on an entirely separate basis.

BUREAU OF RECLAMATION

Exhibit C

Bighorn River—Executed Option Contracts

C-1

(Contract No. 14-06-600-9353, dated November 9, 1967, with Kerr-McGee Corporation, 50,000 acre-feet; Contract No. 14-06-600-9356, dated November 22, 1967, with Shell Oil Company, 28,000 acre-feet; Contract No. 14-06-600-9360, dated December 14, 1967, with Humble Oil and Refining Company, 50,000 acre-feet; Contract No. 14-06-600-9977, dated May 24, 1968, with Peabody Coal Company, 40,000 acre-feet; Contract No. 14-06-600-10, 135, dated June 19, 1969, with Reynolds Mining Corporation, 50,000 acre-feet; Contract No. 14-06-600-10, 141, dated June 20, 1969, with John S. Wold, 50,000 acre-feet; Contract No. 14-06-60028A, dated January 20, 1970, with Gulf Mineral Resources Company, 25,000 acre-feet; Contract No. 14-06-600-57A, dated March 2, 1970, with Gulf Mineral Resources Corporation, 50,000 acre-feet; Contract No. 14-06-600-101A, dated May 22, 1970, with Peabody Coal Company, 40,000 acre-feet; Contract No. 14-06-600-149A, dated September 4, 1970, with Colorado Interstate Gas Company, 30,000 acre-feet; Contract No. 14-06-600-309A, dated January 20, 1971, with American Metal Climax, Inc., 30,000 acre-feet; Contract No. 14-06-600-298A, dated January 11, 1971, with Panhandle Eastern Pipeline Company, 30,000 acre-feet; Contract No. 14-06-600-316A, dated February 10, 1971, with Shell Oil Company, 20,000 acre-feet; Contract No. 14-06-600-329A, dated July 22, 1971, with Westmoreland Associates, 30,000 acre-feet; Contract No. 14-06-600-347A, dated April 21, 1971, with Norsworthy and Feger, Inc., 50,000 acre-feet; Contract No. 14-06-600-353A, dated May 7, 1971, with Cardinal Petroleum Company, 50,000 acre-feet).

Wind River—Executed Option Contracts

C-2

One option contract, No. 14-06-600-10,169, was executed with Sun Oil Company on August 15, 1969, for 35,000 acre-feet, and a similar contract with the Mobil Oil Corporation for 50,000 acre-feet is awaiting approval by the Secretary.

Yellowtail Unit and Boysen Unit (pending applications)

C-3

In the Yellowtail Unit: Western Energy Company, dated February 1, 1968, for 35,000 acre-feet; Sun Oil Company, dated February 26, 1968, for 35,000 acre-feet; Western Energy Company, dated April 10, 1968, for 15,000 acre-feet; Wold-Jenkins Company, dated April 17, 1968, for 50,000 acre-feet; Consolidation Coal Company, dated February 27, 1970, for 30,000 acre-feet; Norsworthy & Reger, Inc., dated March 20, 1970, for 10,000 acre-feet; Ayrshire Coal Company, dated October 5, 1970, for 30,000 acre-feet; Ayrshire Coal Company, dated October 5, 1970, for 30,000 acre-feet; Ayrshire Coal Company, dated April 27, 1971, for 30,000 acre-feet; Intermountain Resources, Incorporated (Floyd L. Cardinal), dated May 14, 1971, for 92,000 acre-feet; the City of Gillette, dated June 3, 1970, for 15,000 acre-feet; and Tennessee Gas Transmission, dated October 15, 1973, for 130,000 acre-feet. In the Boysen Unit: Wyoming State Rural Electric Association, dated January 24, 1972, for 9,000 acre-feet.

Upper Missouri and Wind-Bighorn-Yellowstone Rivers
(pending applications)

C-4

In the Wind-Bighorn-Yellowstone River/ System: Atlantic Richfield Company, dated May 21, 1971, for 50,000 acre-feet; Pacific Power & Light Company, dated May 28, 1971, for 30,000 acre-feet; Northern Natural Gas Company, dated June 8, 1971, for 20,000 acre-feet; and

Continental Oil Company, dated October 18, 1971, for 530,000 acre-feet. In Fort Peck: Consolidated Coal Company, dated July 31, 1968, for 50,000 acre-feet; HFC Oil Company, Inc., dated December 30, 1971, for 50,000 acre-feet; John S. Wold, dated November 22, 1972, for 50,000 acre-feet; Mobil Oil Corporation, dated November 29, 1972, for 50,000 acre-feet; Getty Oil Company, dated February 28, 1973, for 50,000 acre-feet; Wesco, dated August 21, 1973, for 60,000 acre-feet; and Phillips Petroleum Company, dated April 17, 1974, for 50,000 acre-feet. In Lake Tschida (Heart Butte Unit—North Dakota): Peabody Coal Company, dated December 27, 1971, for 18,000 acre-feet. From Lake Sakakawea: Mobil Oil Corporation, dated April 19, 1973, for 50,000 acre-feet; and Basin Electric, dated January 31, 1974, for 9,000 acre-feet. In addition, the following petitions have been filed with the North Dakota State Engineer: Michigan-Wisconsin Pipeline Company, dated January 18, 1973, for 375,000 acre-feet, reduced to 68,000 acre-feet by the State Water Commission; El Paso Natural Gas Company, dated April 2, 1974, for 71,816 acre-feet; and Natural Gas Pipeline Company of America, dated April 17, 1974, for 70,000 acre-feet.

Inquiry No. 8. How was the area to be covered by the EIS for the development of coal resources in the Eastern Power River Coal Basin defined, and how was it determined that an EIS was appropriate for that area?

Response: The appropriateness of the Eastern Powder River Coal Basin EIS and the definition of the area covered were determined as a result of consultations among the Department of Agriculture, the Department of the Interior and the Interstate Commerce Commission. That EIS embraces applications for approval of mining plans and necessary rights of way submitted by the Atlantic Richfield Company, the Carter Oil Company, the Kerr-McGee Corporation, and the Wyodak Resources Development Corporation, and an application to the ICC for construction of a railroad line submitted by the Burlington-Northern, Inc. and the Chicago and Northwestern Transportation Company. The manner in

which the area covered by the EIS was determined is explained in the following paragraphs from the preface of the statement.

The four federal agencies have determined that approval of the pending applications would collectively constitute a major federal action having a significant effect on the quality of human environment. Therefore, the agencies have determined that to protect the public interests most effectively and to meet their individual responsibilities under the National Environmental Policy Act of 1969 most efficiently, they should jointly undertake the preparation of a single environmental impact statement which would consider not only the impacts of the several proposals but also the collective, cumulative impacts, primary and secondary, of the development of the coal resources in the area.

Further, to meet the intent of the Act in the most productive fashion, it is necessary to examine the general geographic area of the proposed and potential actions. The geographic area for basic consideration is that part of the Powder River Coal Basin in Wyoming lying generally eastward from the Powder River to the outcrop line of the coal resource and from somewhat north of Gillette to a point somewhat south of Douglas. The area delination is based in part on present and anticipated levels of mining activity, differing quality of the coal resource, different physical arrangement of the coal beds, somewhat different mining techniques required and differing physical reclamation requirements. Those considerations having a broader scope of geographic impact such as social conditions, economic factors, atmospheric influence, water resources, and recreation uses are treated on a larger regional basis than the primary study area. This statement discusses the existing environment, evaluates the collective impact of the proposed actions and, insofar as now possible, the impacts of potential future coal mining within the geographic area described above. This statement also examines in detail certain pro-

posed activities for which federal actions are required.

Inquiry No. 9. Regarding environmental impact statements for individual projects in the Northern Great Plains area, where the statements have been issued after February 17, 1973, or prepared for projects that were commenced after that time—

- a. Provide one or more representative statements.
- b. Do the statements attempt to provide an assessment of the cumulative impact of the governmental action in the surrounding area?
- c. Do the statements take into account the ecological setting created by private action in the area?
- d. Has the government devised any procedure for cross-referencing among the individual statements?

Response: a. The following statements, which constitute the statements prepared for proposals within the area subject to this litigation, are submitted:

1. Crow Ceded Area Coal Lease, Westmoreland Resources Mining Proposal (This statement is the subject of pending litigation *Redding v. Morton*, 74-1984, United States Court of Appeals for the Ninth Circuit. A copy of the District Court opinion has already been provided.)
2. Proposed Plan of Mining and Reclamation, Big Sky Mine, Peabody Coal Company Coal Lease M-15965, Colstrip Montana.
3. Development of Coal Resources in the Eastern Powder River Coal Basin of Wyoming.

b, c, & d. The statements identified above discuss all the impacts on the existing environment. The description of the existing environment contained in the statements reflects impacts from other private and governmental actions. Thus cumulative impacts are assessed and the ecological setting created by private action in the area is taking into account. In addition the Eastern Powder River Coal Basin EIS contains parts relating to each of five different proposals and a separate part consist-

ing of a regional analysis of broad cumulative impacts on the environment of coal resource development in the Eastern Powder River Coal Basin. That statement thus cross-references among individual proposals. Cross-referencing in future statements will be utilized where necessary to describe the existing environment which could be impacted by proposed actions.

/s/ [Illegible]
Deputy Under Secretary

Subscribed and sworn to before me this _____
day of October 1974.

Notary Public

AFFIDAVIT OF THOMAS S. KLEPPE

CITY OF WASHINGTON)
) ss
DISTRICT OF COLUMBIA)

Thomas S. Kleppe, being duly sworn, deposes and says as follows:

1. I, Thomas S. Kleppe, am the Secretary of the Interior. As the principal official of the Department of the Interior I am responsible for supervising all of its functions.

2. As the Secretary of the Interior I have been delegated general authority to manage the public lands of the United States. 43 U.S.C. §§ 2, 1201; 1457 (Supp. 1972). It is also my responsibility to provide for the orderly development of the mineral resources of the United States, 30 U.S.C. § 181 *et seq.*, including in particular development of the nation's coal resources. 30 U.S.C. §§ 201-209. To fulfill these responsibilities the Department has broad authority to issue coal leases and coal prospecting permits for federal lands (including lands with respect to which the United States has conveyed surface interests but has reserved an interest in the underlying mineral resources), and to approve, disapprove or condition exploration and mining plans submitted by private companies. The Department's jurisdiction over federal lands includes the responsibility to decide whether to enter into options and contracts for the sale and delivery of water and to issue right-of-way permits and special use permits for transmission lines, plant sites, access roads and other uses; these responsibilities often bear importantly on coal development activities respecting federal lands. The Department also has authority to approve coal leases and prospecting permits for Indian lands.

3. It is the responsibility of the Secretary of the Interior, under the Mining and Minerals Policy Act of 1970, to carry out the policy of the Federal Government, to foster and encourage a healthy domestic privately

owned minerals industry. Recent international incidents threatening the security and availability of non-domestic energy supplies have led to Presidentially established goals of reduced dependency on costly and oftentimes unreliable foreign imports. These goals have amplified the demand for domestic coal production and use. Since the oil embargo of 1973, world prices have quadrupled, and the impact is felt throughout our economy. In October, 1974, and again in April, 1975, the President announced a major commitment to increase development and use of our domestic energy, of which coal is our most abundant resource. The Secretary of the Interior has been directed by the President to take actions to insure rapid production from existing leases and to make new, low sulfur coal supplies available. If the nation is to achieve energy self-sufficiency, domestic coal resources, which represent approximately 94 percent of the nation's identified primary energy resources, must be developed. Although coal represents 94 percent of our energy resources, it presently supplies a mere 17 percent of domestic energy consumption. Only in recent years has the country's production of coal approached the peak reached in 1947. The self-sufficiency goals established by the President contemplate the doubling of that production in the next ten years. A total of 250 new coal mines will have to be opened during this period, each averaging 3 million tons per year. By 1985, 70 percent of domestic coal production must come from mines that do not now exist. Substantial lead time is required to increase coal production and that precious lead time is being lost with each passing day. The coal industry, now capitalized at approximately \$4 billion, will face capital requirements as high as \$15 billion by 1985.

4. The Department has significant responsibilities relating to environmental protection. It recognizes its continuing obligation under the National Environmental Policy Act of 1969 (NEPA) to ensure, to the fullest extent possible, that environmental considerations and values are taken into account in Department decision making. The Interior Department's consistent policy is to carefully weigh environmental considerations in exer-

cising its land and resource management responsibilities with respect to the nation's coal resources.

5. To ensure that there is, from the outset, thorough consideration of all factors related to new coal resource development, including performance standards, diligence requirements as well as environmental control, the Department has instituted nationwide policies and internal management controls, including the following:

- (a) On February 13, 1973, then Secretary of the Interior, Rogers C. B. Morton, issued Departmental Order No. 2952 (Exhibit 1). That Order announced that the Department would not issue coal prospecting permits anywhere in the nation pending the preparation of a national program providing for the orderly development of coal resources underlying the public lands of the United States. Order 2952 is still in effect.
- (b) On February 17, 1973, Secretary Morton announced the Department's interim coal leasing policy (Exhibit 2) which restricts substantially the issuance of coal leases throughout the United States. Under the Department's continuing coal leasing policy, coal leases may be issued only under the following conditions:
 - When coal is needed now to maintain an existing mining operation; or when coal is needed as a resource for production in the near future; and
 - when the land to be mined will in all cases be reclaimed in accordance with lease stipulations that will provide for environmental protection and land reclamation; and
 - when an environmental impact statement covering the lease has been prepared under the National Environmental Policy Act.

This policy remains in effect pending adoption of a new policy as discussed in paragraph number 10 hereafter.

- (c) In April 1973, Secretary Morton affirmed the application of the Department's coal leasing policy to mineral leasing on Indian lands (Exhibit 3).
- (d) On September 5, 1975, the Department published new performance standards for surface coal mining on all public and acquired lands of the United States and Indian lands administered by the Department of the Interior. 40 Fed. Reg. 41122. The purpose of these regulations, which include stringent provisions for reclamation, is to protect and preserve the natural environment.

6. The Department has also initiated or participated in a variety of interdisciplinary studies relating to energy resources, their development and use to ensure that decisions which the Department may be called upon to make in the exercise of its management responsibilities will be informed, consistent with both development and environmental responsibilities, and in accord with all aspects of the public interest. Such studies have embraced a number of different geographic areas. They include:

- (a) The North Central Power Study, a study initiated in 1970 to investigate the potential for coordinated development of electric power in the north central United States. The geographic scope of the study included all or portions of twelve states and minor portions of three other states. The North Central Power Study was terminated in 1972, after responses to the Phase I report of the study indicated the inappropriateness of a coordinated plan for development of electric power in the North Central United States.
- (b) The Northern Great Plains Resources Program (NGPRP), a resource study, was initiated June 30, 1972 and conducted with the cooperation of the Federal Government, State governments, industry, environmental groups, and interested members of the public. The area under study includes portions of Montana, Wyoming, North

Dakota, South Dakota, and Nebraska. The principal purpose of the study is to provide an analytical and informational framework for policy and planning decisions at all levels in the Northern Great Plains. On June 23, 1975, NGPRP issued a report entitled "The Effects of Coal Development in the Northern Great Plains." The study, which is the culmination of the joint efforts of the States of Montana, Nebraska, North Dakota, South Dakota, Wyoming, Environmental Protection Agency, Department of Agriculture and Department of Interior, provides data and addresses possible development alternatives for the area, including issues relating to regional geology, mineral resources, water supply and quality, air quality, surface resources, social, economic and cultural aspects, and national energy considerations. The study effort is not a proposal for federal action nor does it recommend or propose a development plan for the area.

Resource studies of the type here described are one of many analytical tools employed by the Department to inform itself as to general resource availability, resource need and general environmental considerations so that it can intelligently determine the scope of environmental analysis and review specific actions it may take. Simply put, resource studies are a prelude to informed agency planning and provide the data base on which the Department may decide to take specific actions for which impact statements are prepared. The scope of environmental impact statements seldom coincide with that of a given resource study, since the statements evolve from specific proposals for federal action while the studies simply provide an educational backdrop.

7. The Department is in the process of modifying the general regulations which currently constitute the Department's national coal leasing policies. 30 C.F.R. Part 211; 43 C.F.R. Part 23, 43 C.F.R. 3041.

8. A final Environmental Impact Statement covering the Department's proposed actions was released on September 19, 1975. The impact statement entitled, Final

Environmental Impact Statement Proposed Federal Coal Leasing Program is frequently referred to as the "Coal Programmatic EIS."

9. In addition to the nationwide internal management policies which the Department has established to ensure that any coal development must be accompanied by careful consideration of environmental considerations, the studies which it has initiated or participated in, and the environmental impact statement which has been prepared and is now issued covering the Department's national coal leasing program, the Department prepares environmental impact statements pursuant to NEPA covering lease issuances, mining plans, and other coal related proposals submitted by private companies as well as on competitive leases or mining plans when proposed by the Department when Department action on the proposals constitutes "major federal action." Under this policy, several impact statements have been prepared for proposals within the States of Montana and Wyoming:

- (a) Crow Ceded Area Coal Lease, Westmoreland Resources Mining Proposal. This EIS, which was submitted to the President's Council on Environmental Quality in January 1974, covers a single mining plan covering five years and 770 acres in Montana. That statement was found to be adequate by the Ninth Circuit in *Cady v. Morton*, No. 74-1987 (9th Cir. 1975), although that Court in its decision of June 19, 1975, has directed the lower court to declare the issuance of the leases upon which the mining plan was based as being a major federal action requiring the preparation of an EIS.
- (b) Proposed Plan of Mining and Reclamation, Big Sky Mine, Peabody Coal Company Coal Lease M-15965, Colstrip, Montana. This EIS, which was submitted to the President's Council on Environmental Quality on March 7, 1974, covers one lease in Montana. The adequacy of this EIS has not been challenged.

- (c) Final Environmental Impact Statement, Eastern Powder River Coal Basin of Wyoming. This EIS, which was prepared by the Departments of Agriculture, Commerce, and Interior, was submitted to the President's Council on Environmental Quality on October 18, 1974. The EIS, which consists of six volumes totalling nearly 1,000 pages, is an analysis of the individual and cumulative impacts on the environment of proposed and potential coal development in the Eastern Powder River Coal Basin; it also analyzes the specific impact of mining plans submitted to the Department by Atlantic Richfield Company, Carter Oil Co., Kerr-McGee Coal Co., Wyodak Resources Development Corp., and a railroad right-of-way requested by Burlington Northern Inc. The adequacy of this EIS has not been challenged.
- (d) Final environmental impact statement entitled "Proposed Plan of Mining and Reclamation—Belle Ayr South Mine, Amax Coal Company, coal lease W-0317682, Campbell County, Wyoming". The draft of this EIS was published by the Department of the Interior in March, 1975 and copies were delivered to this court and served upon counsel for appellants. In delivering such draft to this court and to opposing counsel, the Department acted in the interest of informing all parties concerned of certain Departmental actions being taken in the Eastern Powder River Coal Basin, Wyoming. It was under no legal compulsion to do so inasmuch as the injunction of January 3, 1975, did not include this particular mining plan. A final version of the impact statement was published by the Department on October 7, 1975. As of the date of this affidavit, the adequacy of this final EIS has not been challenged.

10. In addition to the foregoing, the Department is in the process of preparing or is commencing to prepare

environmental impact statements for other regions similar to those above. In each case, as in those listed above, the decision to prepare the statement is based on a definable proposal or proposals for federal action.

- (a) On June 26, 1975, the Secretary ordered that a regional EIS be prepared for the area of Sweetwater County, Wyoming. The regional EIS will be supported by individual plans for each lease or combination of leases and mining plans as appropriate.
- (b) On September 25, 1975, the Secretary ordered that a regional EIS be prepared for the Powder River Basin, Montana. The statement will cover all of Powder River County and portions of Custer and Rosebud Counties. This regional EIS will be supported by individual statements for each lease or combination of leases and mining plans as appropriate.

11. The Department's policy with regard to the scope and preparation of coal related environmental impact statements has been that articulated by Secretary Morton in an affidavit filed in connection with this litigation on October 26, 1973:

It is possible a decision will be made to prepare a statement for the entire Northern Great Plains region, but the information available may indicate that statements on smaller subregions, geologic structures, basins, or selected individual actions will fulfill the policy and procedural requirements of the National Environmental Policy Act in a more satisfactory manner.

In adopting a current policy with regard to coal leasing which will assure environmental protection to the maximum extent practicable, the Department has determined that, whenever possible, several proposals for federal actions in the same region will be covered by a single environmental impact statement rather than by multiple statements. In such cases, the region covered, as distinguished from a "province", will be determined by

basin boundaries, drainage areas, areas of economic interdependence and other relevant, identifiable factors. In all cases, each coal lease, prospecting permit, preference right lease application or mining plan will be analyzed to determine whether or not an EIS is warranted. An environmental analysis will be prepared prior to issuing any competitive or noncompetitive lease, prospecting permit or mining plan approval. If the analysis concludes that the action will have a significant effect on the human environment, as is most often the case, an EIS will be prepared unless a previous statement has sufficiently analyzed the impacts of the proposed specific action.

12. In order to meet its responsibilities under the statutes relating to federal lands and resources and to follow the dictates of NEPA, the Department has the authority and responsibility to exercise its expertise in determining the need for, the scope and timing of environmental impact statements covering proposals for federal actions. Decisions on the scope and timing of a statement must take into account myriads of complex factors including the degree to which a proposal has developed and to which it can be defined, its relationship, if any, to other proposed or potential actions and the Department's assessment of the adequacy of the knowledge and data it possesses in relation to a proposal. Decisions relating to a statement require knowledge of the evolving plans and programs of the state and local governments and of private parties and the relationship of such plans to a proposal and knowledge of related legislation which could significantly impact a proposal. These decisions require an expertise gained slowly through experience and education and obtained at high cost in both money and man hours. To require the Department to decide on an impact statement, as the Court does, where there is no plan or proposal for federal action, is to require that it ignore its authority, ignore its expertise and proceed as an uninformed speculator filled with dreams and guesses. The Department does not have a plan or program to develop or contribute to the development or to control the development of coal

resources in the Northern Great Plains, the Rocky Mountain area, Appalachia, or in any other "region" or "province", as such, in the country.

13. With respect to the proposed plan of mining and reclamation for the Belle Ayr South mine identified in paragraph 9(d) above, this Department will be in a position to act 30 days after final publication of the statement and the filing of the same with the Council on Environmental Quality, that is to say, on or about November 7, 1975. The Department has been in a position to act on the mining plans identified in paragraph 9(c) above, for more than nine months. After issuance of the Eastern Powder River Basin final impact statement on October 18, 1974, it initially delayed action because the Order of the United States Court of Appeals for the District of Columbia Circuit dated June 17, 1974, cautioned that "substantial restraint" be exercised by the Department while that Court was considering this litigation. Subsequently, the Department was enjoined from taking any action on the mining plans and railroad right-of-way covered in the six volume Eastern Powder River Coal Basin EIS by an Order of the Court dated January 3, 1975. On that same date, without knowledge of the injunction, the Under Secretary of the Interior took action to approve the plans and right-of-way which action was rescinded on January 9 when the effect of the Order became known. The Court's decision of June 16, 1975, entered one year after the Court agreed to give the case expedited consideration, continues that injunction.

14. Prompt action on the four mining plans identified in paragraph 9(c) above, as to which this Court has already entered its injunction, is necessary because the low sulfur coal which they will yield will be needed in the near future by electrical utilities and other major energy consumers. As a result, such coal can be burned without violation of applicable Federal and State air pollution requirements and without resort to expensive sulfur removal devices of unproven reliability. The Federal Energy Administration has already ordered 74 power plants owned by 25 utility companies to convert from gas to

coal. 40 Fed. Reg. 28430 (July 3, 1975). In addition, the FEA has ordered that 41 companies building new power plants must have coal-burning capability. The orders affect plants in 23 states.

15. Amax Coal Company's Belle Ayr South mine is a current operation employing over 100 individuals. (See affidavit of W. Hollie Hopper attached hereto and marked Exhibit 4). It has mined or is mining approximately 160 acres of federal and private coal land at Belle Ayr South. 1974 production of approximately 3.3 million tons of coal is estimated to increase to 5 million tons in 1975 with peak production of 15 million tons per year in 1977 through 1996 ending with 14 million tons production in 1997. The mining plan, as proposed, would require that Amax initiate and complete a program of reclamation and revegetation of the mined areas which would meet the standards of federal and Wyoming State law and would be accomplished progressively as the mining operation proceeds. As noted in the final EIS, at full production, a strip of land embracing approximately 126 acres will be mined each year (page 13) and the mining strips will be the subject of an ongoing reclamation and revegetation program.

The affidavit of W. Hollie Hopper reveals that: (a) Amax Coal Company presently has contractual commitments to supply tens of millions of tons of coal from this mine during the years 1976, 1977, and 1978; (b) substantially all of this coal is destined for delivery to public utilities under long-term supply contracts; (c) for those customers scheduled to receive coal deliveries in 1976, alternative sources of supply will, in all probability, be impossible to obtain, and (d) disruption of this particular operation and deprivation of these markets of this unique coal source inevitably will result in service curtailment to millions of customers and innumerable industries will face the loss of power sources. The twelve affidavits attached to Exhibit 4 tell the reader a story of new generating plants, on order and under construction, designed especially to accommodate the unique low sulfur and burning qualities of this coal, a story of permits obtained and huge amounts of capital expended

in reliance on this coal, a story of the inability of the utilities to meet the basic energy needs of millions of people without this coal.

16. Two new dimensions have been added to this situation: a serious shortage in natural gas supplies and the escalated cost of fuel oil. The coal from the sources which are the subject of this affidavit is unique in its burning characteristics and it can be and, in the case of Amax Coal Company, is being made available to meet new, urgent needs. The availability of fuel oil to these utilities to meet their increased demands is tenuous at best. The record shows that the substantial volumes of fuel oil needed to offset the loss of coal resulting from the injunction against these mines would probably be unavailable. Even if it were possible to obtain such volumes, they could now be obtained only at substantial cost increases and those increased volumes would continue to be subject to the vagaries of Middle East politics and the unpredictable pricing policies of the Organization of Petroleum Exporting Countries. Another factor affecting the availability and use of fuel oil is that utility use of both middle distillate and residual fuel oil is regulated by the Federal Energy Administration. Under that agency's mandatory allocation program, utility use of middle distillate fuel oil is restricted to that quantity consumed in 1972; although not so severely restricted, utility use of residual fuel oil is determined in part on the ability of the utility to use coal.

17. I am prepared to act favorably on the four mining plans subject to the present injunction, several of which were filed with the Department more than two years ago. The Department has reviewed these mining plans exhaustively. Appropriate officials have been ordered to take all steps short of actual approval of the plans and rights-of-way. Their environmental impact has been carefully assessed in individual environmental impact statements. Favorable action on these mining plans would not commit the Department to the approval of other mining plans or other coal related development proposals in the Northern Great Plains. I am convinced that their prompt approval subject to the inclusion of

environmental stipulations, is in the public interest. I am equally convinced that we have reached the point where further delay will seriously threaten the national interest.

Further, it is imperative that a prompt decision be made on the proposed plan of mining and reclamation for the Belle Ayr South mine. This mine is making and is capable of making even greater contributions to the energy needs of this country. The welfare of a vast portion of this nation will be affected if I am precluded from making a decision on the merits. I intend making such a decision promptly after the 30 day period following October 7, 1975, the date upon which the final impact statement was published, unless restrained by an order of a court of competent jurisdiction.

/s/ Thomas S. Kleppe
Secretary of the Interior

Subscribed and sworn to before me this 28 day of Oct. 1975.

/s/ Marilyn D. Army
Notary Public

My commission expires 8/14/78.

UNITED STATES DEPARTMENT
OF THE INTERIOR
OFFICE OF THE SECRETARY
Washington, D.C. 20240

[SEAL]

February 13, 1973

ORDER NO. 2952

Subject: Issuance of Prospecting Permits for Coal

In the exercise of my discretionary authority under section 2(b) of the Mineral Leasing Act, as amended (30 U.S.C. § 201(b)), I have decided not to issue prospecting permits for coal under that section until further notice and to reject pending applications for such permits in order to allow the preparation of a program for the more orderly development of coal resources upon the public lands of the United States under the Mineral Leasing Act, with proper regard for the protection of the environment.

Accordingly, no prospecting permits for coal under section 2(b) of the Mineral Leasing Act, *supra*, shall be issued until further notice. All pending applications for such permits shall be rejected, and any applications submitted in the future shall be promptly rejected.

Nothing in this memorandum shall be deemed to restrict the rights of holders of prospecting permits, issued prior to this directive, to obtain preference right coal leases under section 2(b), *supra*, or to prevent the issuance of competitive coal leases under section 2(a) of the Mineral Leasing Act, as amended (30 U.S.C. § 201(a)).

I have determined that the issuance of this order is not such a major Federal action significantly affecting the quality of the human environment as to require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. § 4332(2)(C)).

/s/ Rogers C. B. Morton
Secretary of the Interior

DEPARTMENT OF THE INTERIOR

news release

OFFICE OF THE SECRETARY

For Release February 17, 1973

SECRETARY MORTON ANNOUNCES NEW
COAL LEASING POLICY

A two-pronged coal leasing policy—aimed at helping to satisfy energy needs while respecting the integrity of the environment—was announced today by Secretary of the Interior Rogers C. B. Morton.

The new coal policy hinges on a series of short-term and long-term actions, which, the Secretary said, "will be made with clear recognition that there is growing need for low-sulfur coal to supply the Nation's needs for clean energy." He further stated:

"Coal is one of the most abundant energy resources. Most of the low-sulfur coal reserves of the U. S.—about 85 percent—are located on public lands in the West within the regulatory jurisdiction of the Interior Department. We must make increasing use of this resource. At the same time we must assure that development is carefully controlled to avoid environmental mistakes of the past and to keep our planning options open."

Secretary Morton said, the new coal leasing policy will operate in conformity with what he termed the Department's "overriding goals." These are three, he stated, describing them as follows:

- (1) to assure maximum environmental protection.
- (2) to provide for orderly and timely resource development, and
- (3) to assure a fair market value return for resources sold.

He also outlined steps he would take "to resolve the apparent conflict between the need to develop the resource and the need to protect the environment." The

short-term applicaion of controls would be effected as follows:

Coal leases will be issued only under the following conditions:

- When coal is needed now to maintain an existing mining operation; or
- When coal is needed as a reserve for production in the near future; and
- When the land to be mined will in all cases be reclaimed in accordance with lease stipulations that will provide for environmental protection and land reclamation; and
- When an environmental impact statement covering the proposed lease has been prepared when required under the National Environmental Policy Act.

Secretary Morton further stipulated that all pending and future applications for prospecting permits would be henceforth rejected until a thorough analysis of the current supply/demand situation can be made and more comprehensive planning of resource use can be accomplished.

"This short-term leasing policy is intended to insure that current coal production can continue," the Interior head stated. "It will prevent deficiencies in supplies of coal which are necessary to meet our continuing energy needs."

Long range aspects of the Secretary's leasing policy provide for:

- Development of an environmental impact statement on the Department's entire coal leasing program, supplementing this as necessary for appropriate impact reporting on a regional basis or for individual leases.
- Development of a planning system to determine the size, timing, and location of future coal leases in order to meet energy needs most effectively.

"The long-range aspects of the new leasing policy will combine a sound approach to development with an environmental ethic that will become the core of philosophy of Interior as a Department of Natural Resources," Secretary Morton said. "Wherever regulations need to be revised to put teeth into this approach, that will be accomplished with all the speed we can muster."

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UNITED STATES DEPARTMENT
OF THE INTERIOR
OFFICE OF THE SECRETARY
Washington, D.C. 20240

[SEAL]

Apr. 13, 1973

Memorandum

To: Assistant Secretary for Congressional & Public Affairs

From: Acting Secretary of the Interior
(Sgd) John C. Whitaker

Subject: Department policy regarding mineral leasing of Indian lands

During my recent testimony before the Senate Interior and Insular Affairs Committee I was requested to submit a statement of Department policy regarding mineral leasing of Indian lands. The following statement sets forth that policy.

The policy of the Department of the Interior is to approve mineral leasing on Indian lands where:

- (a) the tribal or individual Indian landowner desires to dispose of the minerals;
- (b) the terms and conditions of the lease are in the best interest of the Indian landowner; and
- (c) appropriate environmental safeguards are imposed on the lessee, including satisfaction of the requirements of NEPA.

AFFIDAVIT OF FRANK G. ZARB

CITY OF WASHINGTON)
DISTRICT OF COLUMBIA)

FRANK G. ZARB, being duly sworn, deposes and says as follows:

1. I, FRANK G. ZARB, am Administrator of the Federal Energy Administration (FEA). I am also Executive Director of the Energy Resources Council, which insures communication and coordination among federal agencies in the formulation and implementation of national energy policy. I previously held the position of Associate Director, Science, Energy and Natural Resources, Office of Management and Budget.

2. The Federal Energy Administration was established by the Federal Energy Administration Act of 1974, 15 U.S.C. §§ 761, *et seq.* Under this authority, the Administrator is given a number of specific responsibilities, including the duty to:

(1) advise the President and the Congress with respect to the establishment of a comprehensive national energy policy in relation to the energy matters for which the Administration has responsibility, and, in coordination with the Secretary of State, the integration of domestic and foreign policies relating to energy resource management;

(2) assess the adequacy of energy resources to meet demands in the immediate and longer range future for all sectors of the economy and for the general public; [and]

. . .

(9) collect, evaluate, assemble, and analyze energy information on reserves, production, demand, and related economic data.

This affidavit is submitted for the limited purpose of assisting the Court in an evaluation of the role played by increased coal production in meeting our national energy needs.

3. Until the early 1950's, United States demand for energy did not exceed this country's ability to produce energy from available domestic resources. Since that time, however, a combination of accelerating demand, dwindling domestic reserves of relatively cheaply recoverable petroleum and natural gas and air pollution considerations has caused the United States to develop a growing dependence on imported petroleum and petroleum products. By mid-1973, the United States had become dependent on imported crude oil and petroleum products for about 35 percent of its total petroleum consumption. This percentage, moreover, rose to about 38 percent by early 1975. At the same time, crude oil production in the United States has been declining and increases in natural gas consumption has been exceeding new domestic discoveries. As for the production of coal, which can be used in substitution of petroleum products and natural gas in some processes and of which the United States possesses abundant reserves, recent annual production levels are only slightly above the levels extant in the 1940's. As these various circumstances converged, there was another event which served to dramatize this Nation's need to bring its domestic consumption and production levels into line and to achieve relative energy independence. That event was, of course, the embargo imposed by Arab oil-producing countries upon exports of crude oil and petroleum products to the United States.

4. In response to this state of affairs and pursuant to the responsibilities delegated to the Administrator and the agency under the Federal Energy Administration Act, the FEA initiated Project Independence in March, 1974, to evaluate our serious energy problems and to provide a framework for developing a national energy policy. The *Project Independence Blueprint*, which was released in November, 1974, underscored the fact that the United States cannot continue to depend upon insecure supplies of foreign oil to meet its energy demands and made clear the need for a national energy policy to avert the potentially serious consequences to our economy of another oil embargo in the future. To reach a higher level of energy self-sufficiency in the near term and, in

time, relative energy independence, the *Blueprint* recognized the ample coal resources this Nation has and the vital part they must play if the objectives of Project Independence are to be met. See *Final Report of the Inter-agency Coal Task Force, Project Independence Blueprint*.

5. Congress also recognized the importance of our coal resources in achieving energy independence when it passed the Energy Supply and Environmental Coordination Act of 1974. (P.L. 93-319) Under that Act, authority was given to FEA to undertake a number of energy conservation and supply measures, including the authority to prohibit certain powerplants and major fuel burning installations from burning natural gas or petroleum products as their primary energy source and to require that powerplants in the early planning process be designed and constructed so as to be capable of using coal as their primary energy source. In addition, Congress presently has pending before it an extension of this authority.

6. The United States has almost 53 percent of the free world's coal resources, and domestic coal reserves comprise approximately 85 percent of U.S. fossil fuel resources. Despite this abundance, however, including large deposits of low sulphur coal in the West, coal has gradually declined in importance as a major fuel. Today coal accounts for only 17.2 percent of our energy consumption. In 1974 only 601 million tons of bituminous coal and lignite were mined, an amount less than was mined 30 years ago.

7. If the United States is to achieve a reasonable degree of energy self-sufficiency, coal production will roughly have to double over the next decade. Our goal is production of slightly more than a billion tons of coal annually by 1985—the equivalent of opening a million and a half ton mine every week for the next ten years. The President's program contemplates the opening of 250 major new mines over the next ten years. The annual production forecasted in the *Project Independence Blueprint* for the Northern Great Plains region is as follows:

1975	48,100 (thousand short tons)
1977	65,750
1980	101,600
1985	155,100

To the extent that there is any delay in reaching such production levels through orderly and responsible development of our coal reserves, however, our efforts toward energy independence will be inhibited.

8. To achieve necessary increases in coal production to meet national goals, prompt federal decisions on additional coal development are essential. Estimates in late 1974 placed the capital requirement for new coal production and transportation facilities at \$15.4 billion over the next ten years. In order to raise this capital, prospective coal producers need a sufficient element of certainty to be able to enter into long-term supply contracts with electric utilities or other purchasers. Further, from a decision to proceed ahead, it still takes approximately three years to open a large surface mine and five years to open an underground mine. Thus, it is crucial to this Nation's energy objectives that the Federal Government have the latitude necessary to effectuate systematic and responsible development of our critical coal resources.

/s/ Frank G. Zarb
FRANK G. ZARB
Administrator

Subscribed and sworn to before me this 28th day of October, 1975.

/s/ Thomas H. Kemp
THOMAS H. KEMP
Notary Public

My commission expires September 14, 1979

SUPREME COURT OF THE UNITED STATES

No. 3. 75-552 and 75-561

THOMAS S. KLEPPE, SECRETARY OF THE INTERIOR, ET AL.,
PETITIONERS

v.

SIERRA CLUB, ET AL., and

AMERICAN ELECTRIC POWER SYSTEM, ET AL.

v.

SIERRA CLUB, ET AL.

ORDER ALLOWING CERTIORARI. Filed January 12, 1976

Petitions for writs of certiorari to the United States Court of Appeals for the District of Columbia Circuit granted. Cases consolidated and a total of one hour allotted for oral argument. Application for stay of the injunction entered by the United States Court of Appeals for the District of Columbia Circuit on January 3, 1975, and continued on June 16, 1975, presented to the Chief Justice and by him referred to the Court, granted pending final disposition of these cases.